

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

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In Re: ) Case No. 19-30088  
PG&E CORPORATION AND PACIFIC ) Chapter 11  
GAS AND ELECTRIC COMPANY )  
Debtors. ) San Francisco, California  
 ) Tuesday, July 9, 2019  
 ) 9:30 AM  
 )

MOTION FOR ENTRY OF  
PROTECTIVE ORDER PURSUANT TO  
FED. R. BANKR. P. 7026 AND  
9014(C) AND 11 U.S.C. SECTION  
105(A) GOVERNING DISCOVERY  
MATERIALS AND OTHER  
INFORMATION FILED BY PG&E  
CORPORATION [2459]

MOTION OF THE OFFICIAL  
COMMITTEE OF TORT CLAIMANTS  
FOR ENTRY OF A PROTECTIVE  
ORDER [2419]

MOTION PURSUANT TO 11 U.S.C.  
SECTIONS 363 AND 105(A) AND  
FED. R. BANKR. P. 6004  
AUTHORIZING DEBTORS TO  
PURCHASE DIRECTORS AND  
OFFICERS INSURANCE [2471]

APPLICATION PURSUANT TO  
U.S.C. SECTION 327(E) AND  
FED. R. BANKR. 2014(A) AND  
2016 FOR ORDER AUTHORIZING  
THE DEBTORS TO RETAIN  
COBLENTZ PATCH DUFFY & BASS  
LLP AS SPECIAL COUNSEL NUNC  
PRO TUNC TO THE PETITION  
DATE, FILED BY PG&E  
CORPORATION [2595]

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE DENNIS MONTALI  
UNITED STATES BANKRUPTCY JUDGE

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PG&E Corp., Pacific Gas and Electric Co.

1 SAN FRANCISCO, CALIFORNIA, TUESDAY, JULY 9, 2019, 9:30 AM

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3 (Call to order of the Court.)

4 THE CLERK: All rise. Court is now in session, the  
5 Honorable Dennis Montali presiding.

6 THE COURT: Good morning.

7 IN UNISON: Good morning, Your Honor.

8 THE COURT: Welcome back, everyone.

9 THE CLERK: This is the Court's --

10 THE COURT: You're in the first chair today --

11 THE CLERK: -- 9:30 calendar in the matter of PG&E --

12 THE COURT: -- Mr. Tsekerides, huh?

13 MR. TSEKERIDES: Yeah, for today.

14 THE COURT: All right, go ahead, call the case.

15 THE CLERK: This is the Court's 9:30 case in the  
16 matter of PG&E Corporation.

17 THE COURT: Where do you want to begin?

18 MR. TSEKERIDES: If it's okay with you, Your Honor,  
19 with the D&O insurance motion.

20 THE COURT: Sure. We only have three items, right?  
21 By my calculation.

22 MR. TSEKERIDES: That's right. That's right.

23 THE COURT: Yeah. Okay. Well, I got the -- I read  
24 the background. I mean, just really before spending a lot of  
25 time on it, I want to see what the committee's response is.

PG&E Corp., Pacific Gas and Electric Co.

1 MR. TSEKERIDES: That's my -- I mean, that's fine with  
2 me.

3 THE COURT: Who's here for the committee?

4 Well, we had so much time to prepare. We only got  
5 your response yesterday morning at 9:30, so, plenty of time;  
6 right?

7 MR. STONE: Your Honor, Alan Stone from Milbank, here  
8 on behalf of the official committee of unsecured creditors.

9 THE COURT: So, Mr. Stone, sixty-four-dollar question:  
10 is the committee on board with this now, or still opposing it?

11 MR. STONE: We're still opposing it, Your Honor.

12 THE COURT: Okay. Well, go ahead and say why. And  
13 we -- of course we're mindful that there're some confidences in  
14 the documents, so we --

15 MR. STONE: Right. And I -- my remarks will avoid  
16 those.

17 Your Honor, first of all, I think that the standard  
18 that we're looking at here needs to be examined. The debtors  
19 allege that the typical business-judgment standard ought to  
20 apply. We think, in fact --

21 THE COURT: If that's true, you and I can just call it  
22 a day and be done with it; right? We don't have to do  
23 anything. Right?

24 MR. STONE: Right.

25 THE COURT: Okay.



PG&E Corp., Pacific Gas and Electric Co.

1 MR. STONE: But the Court should apply special  
2 scrutiny here, because this really is an interested  
3 transaction. I mean, these directors are trying to feather  
4 their own nest here. So we think the Court needs to --

5 THE COURT: Well, that's --

6 MR. STONE: -- look at this carefully.

7 THE COURT: It's not -- I mean, that's a pejorative  
8 term. They're not doing anything wrong.

9 MR. STONE: Correct.

10 THE COURT: Okay.

11 MR. STONE: I agree with that. And --

12 THE COURT: All right.

13 MR. STONE: And we certainly recognize the utility and  
14 importance of having directors protected, but they are  
15 protected, and that's really our point. The fundamental  
16 question here is, is there a risk of depletion of the current  
17 and outstanding policies, whether it's a 2017 policy for 250  
18 million or the 2018 policy, which is 300 million dollars, or a  
19 little of both?

20 THE COURT: Right.

21 MR. STONE: And the debtors' focus seems to be on  
22 whether it's plausible that claims will be brought as a result  
23 of new incidents, including new fires. That's really not the  
24 inquiry. The inquiry is, is the current coverage sufficient  
25 and is there a reason to have additional insurance?

PG&E Corp., Pacific Gas and Electric Co.

1 THE COURT: But if there were a new fire in 2019,  
2 there would be the question of whether the insurers are on  
3 the -- there's no question that the policy covers the time  
4 period. The question is whether the specifics of it and the  
5 sequencing apply; right?

6 MR. STONE: That's correct, Your Honor. The --

7 THE COURT: Okay.

8 MR. STONE: So the 2018 policy that's currently in  
9 force --

10 THE COURT: Right.

11 MR. STONE: -- extends to May of 2020.

12 THE COURT: Correct.

13 MR. STONE: Right? So, next year. So they're claims-  
14 made policies, which means that if there were a fire in 2019  
15 and that claim were noticed, it would be covered.

16 THE COURT: Right. Yeah, that's the way I understood  
17 it, too.

18 MR. STONE: Right. Right. And so the question is, is  
19 there enough coverage for the current directors, given the fact  
20 that there's a clause in both the 2017 policy and the 2018  
21 policy which gives preference to pre-petition claims? And we  
22 think that, at a minimum, the debtors have to put forth some  
23 kind of evidence that would indicate that there is a risk of  
24 depletion.

25 THE COURT: Well, back --

PG&E Corp., Pacific Gas and Electric Co.

1 MR. STONE: There's no question --

2 THE COURT: Back up. Is the committee willing to  
3 accept the late arrival of all the information, Ms. Markland's  
4 declaration and so on, or do you to take issue with the timing  
5 of it? Because I wasn't kidding; when I get -- when I get an  
6 incomplete opposition one twenty-four-hour period before the  
7 hearing, that doesn't give me a lot of time. And if it doesn't  
8 give you enough time, I might be inclined just to delay things,  
9 unless you want to go forward and have it heard today.

10 MR. STONE: Well, Your Honor, I don't know that there  
11 is really a necessity for delay. The --

12 THE COURT: Okay.

13 MR. STONE: We certainly -- we're not surprised by  
14 anything that was in the late-coming submission that we got  
15 last night. And I can deal with whatever was in there, today,  
16 including the one case that they --

17 THE COURT: I wasn't worried --

18 MR. STONE: -- discussed.

19 THE COURT: -- about cases. I mean --

20 MR. STONE: Yeah.

21 THE COURT: -- I was worried about the fact that the  
22 original papers made it sound like the declarant knew all she  
23 needed to know, and then the opposition said, well, no, she  
24 really didn't. And I accept that she can't know everything,  
25 but it bothered me, frankly, that the debtor should have told

PG&E Corp., Pacific Gas and Electric Co.

1 us what they were relying on, rather than tee up a declarant  
2 who claimed to know things that she really didn't.

3 So it's not a criticism of her. It's -- the process  
4 shouldn't work that way. Right? In other words --

5 MR. STONE: I --

6 THE COURT: -- I have no problem with an executive  
7 like Ms. Markland saying, I rely on the information I get from  
8 my lawyers or staff people or all the other sources. But it  
9 was sort of like here's the deal, this is why we need it done.  
10 And that's --

11 MR. STONE: Right.

12 THE COURT: -- that's what you --

13 MR. STONE: That's -- it's exact --

14 THE COURT: You seized on that.

15 MR. STONE: It's exactly what we're complaining about,  
16 Your Honor. And again, I don't discount anything that Ms.  
17 Markland says. I took her deposition for a short period the  
18 other day --

19 THE COURT: Right.

20 MR. STONE: -- and I think that she certainly  
21 established what was already in the policies, and there's no --  
22 really no dispute about them.

23 THE COURT: Right, there's no dispute about --

24 MR. STONE: Yeah.

25 THE COURT: I mean, they are what they are, and the

PG&E Corp., Pacific Gas and Electric Co.

1 question's what to do about it. Your concern is -- well, go  
2 ahead, you finish your --

3 MR. STONE: Yeah.

4 THE COURT: Yeah.

5 MR. STONE: So --

6 THE COURT: Go ahead.

7 MR. STONE: -- in some ways, as Ms. Markland pointed  
8 out in her deposition, this -- there's a question of timing  
9 here, because there's no question that the policies will not be  
10 depleted during this bankruptcy, I mean, assuming that it goes  
11 the way that people are looking at it. All the claims are  
12 stayed. And --

13 THE COURT: Well, I mean, they are. They are, but --

14 MR. STONE: Yeah.

15 THE COURT: -- that doesn't mean they won't be  
16 unstayed.

17 MR. STONE: Right. Understood. But for now, they're  
18 stayed, and very little has been expended toward them.

19 THE COURT: Um-hum. Right.

20 MR. STONE: And so what evidence have the debtors  
21 presented that any of the lawsuits will result in judgments,  
22 settlements, or costs that would exceed 250 million dollars or  
23 300 million dollars or some combination thereof? They  
24 presented no history of PG&E paying out hundreds of millions of  
25 dollars in connection with what are director-oversight claims,

PG&E Corp., Pacific Gas and Electric Co.

1 which -- six of these seven lawsuits are director-oversight  
2 claims.

3 THE COURT: They're oversight claims, right. They  
4 aren't --

5 MR. STONE: Right.

6 THE COURT: They aren't accusing the directors of  
7 mishandling the wiring or causing the fire.

8 MR. STONE: Exactly. And there's no history of huge  
9 payouts by other companies, including competitors, in  
10 connection with director-oversight claims. And indeed, a  
11 survey of director-oversight claims nationwide would suggest  
12 that most of them are dismissed, because the standard for  
13 director-oversight claims is a very difficult one for  
14 plaintiffs.

15 The securities action here accuses the directors of  
16 intentionally misleading the public by saying that they were  
17 putting certain safety measures in place and then fires  
18 happened and therefore they must have been lying. We think  
19 that's also a relatively weak claim that --

20 THE COURT: But even if those claims are prosecuted,  
21 those are already in the system.

22 MR. STONE: Right.

23 THE COURT: It's the question of whether there should  
24 be insurance for the next claim.

25 MR. STONE: That's right.

PG&E Corp., Pacific Gas and Electric Co.

1 THE COURT: Right?

2 MR. STONE: Right.

3 THE COURT: Okay.

4 MR. STONE: So, importantly, Your Honor, Ms. Markland  
5 testified at her deposition that her basis for belief that  
6 additional insurance was needed was these brainstorming  
7 sessions that she had with --

8 THE COURT: Right.

9 MR. STONE: -- counsel and with the insurance broker.  
10 And importantly, she also testified that there was no  
11 assessment of the likelihood of the depletion of the policies,  
12 during those discussions. And that's on page 11 of her  
13 deposition.

14 THE COURT: I only have selected pages, also, so I'm  
15 not even -- I don't even attempt to understand her --

16 MR. STONE: Well, Your Honor, we would be happy to  
17 provide a fully unredacted copy to the Court.

18 THE COURT: I'm not going to --

19 MR. STONE: All right.

20 THE COURT: -- sit here and read it while everybody --  
21 I guess I could, all sixty pages of it, but --

22 MR. STONE: All right.

23 THE COURT: -- that's not the plan here.

24 MR. STONE: Your Honor, in their late-coming reply  
25 papers, the debtors cite the New Bedford case out of the

PG&E Corp., Pacific Gas and Electric Co.

1 District of Massachusetts, for the proposition that this is  
2 easy, that this is judgment, and that courts have allowed this  
3 in the past. That case, Your Honor, involved the purchase of a  
4 tail policy, which is one that extends the discovery period of  
5 a claims-made policy beyond its term.

6 In fact, PG&E already had -- has a tail policy as a  
7 result of their extension of the 2018 policy. That's why it  
8 costs so much money. A significant amount of the amounts that  
9 they paid for that extension were in connection with getting a  
10 six-year tail. The inquiry there was risk of claims being  
11 brought, which, again, we don't deny that there could be claims  
12 brought in 2019 and 2020 and beyond. But there was no inquiry  
13 there about the risk of depletion, which is really what the  
14 issue is here.

15 So, really the debtors' argument here is what's the  
16 big deal, we get all this money back at the end anyway --

17 THE COURT: Well, but that's --

18 MR. STONE: -- if it's not used.

19 THE COURT: -- but that's part of the question. That  
20 means there is tucked under the rug a check for a lot of money  
21 that's safely hidden there -- sits there -- not -- "hidden"'s  
22 the wrong word -- sits there, whether it's in the offshore  
23 trust or under the rug. It's five years it's not available.

24 MR. STONE: Correct.

25 THE COURT: And --



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1 MR. STONE: And that's exactly our point, Your Honor.

2 THE COURT: And everybody suggests this company should  
3 be out of bankruptcy within five years or earlier. Right?

4 MR. STONE: Hopefully sooner, Your Honor.

5 THE COURT: So what happens to that money in the  
6 meantime? It just -- it's just set aside; right?

7 MR. STONE: It's set aside, it's invested, they get  
8 the returns on the investment. It's --

9 THE COURT: Well, but --

10 MR. STONE: Yeah.

11 THE COURT: -- but more specifically, it means, if I  
12 grant the motion, one or both of the debtors -- I'm not sure  
13 which one -- that's important too -- puts aside fifty million  
14 dollars.

15 MR. STONE: That's correct.

16 THE COURT: And it's never to be seen again until five  
17 years later.

18 MR. STONE: And we don't think that's justified, Your  
19 Honor.

20 THE COURT: Yeah.

21 MR. STONE: So let's --

22 THE COURT: So what do we tell the directors, the  
23 individual directors? "Sorry, you're hung up"? Do I tell  
24 them, "If you can't stand the heat, don't stand in the  
25 kitchen"?

PG&E Corp., Pacific Gas and Electric Co.

1 MR. STONE: Well, that's --

2 THE COURT: I mean, what do we tell them?

3 MR. STONE: -- that's certainly one thing we can tell  
4 them. But let's say that the motion today is denied, that  
5 there are additional claims asserted, that the insurers  
6 successfully limit the coverage to the 250 million dollars in  
7 the 2017 policy, and that somehow that coverage is depleted by  
8 the pre-petition claims. Then the company, or the reorganized  
9 entity more likely, will have to dip into its treasury to pay  
10 those costs.

11 THE COURT: Well, it'll be a post-petition  
12 administrative expense.

13 MR. STONE: Exactly, Your Honor.

14 THE COURT: Reading Co. v. Brown. Right?

15 MR. STONE: Correct, Your Honor.

16 THE COURT: It's --

17 MR. STONE: That's exactly our point.

18 THE COURT: It's what it is. So --

19 MR. STONE: So -- and so we think that they -- they're  
20 not being left out to dry, that there's still money here, that  
21 there are administrative claims, that it's really a question of  
22 whether you're going to set aside that fifty million dollars  
23 now or you're going to end up having to pay it later, assuming  
24 that their parade of horrors occurs.

25 THE COURT: Well, if there is a subsequent event of

PG&E Corp., Pacific Gas and Electric Co.

1 some magnitude like we don't want to happen, the first claim  
2 would be against the debtor; the confirmed debtor or the not-  
3 yet-confirmed debtor; right? So even if an officer or director  
4 has some culpability, it's still, unless there's intentional --  
5 or umbrage (ph.) -- we're not assuming that -- it still comes  
6 out of the debtor first; doesn't it?

7 MR. STONE: It does, Your Honor.

8 THE COURT: Right?

9 MR. STONE: And --

10 THE COURT: That's the whole point.

11 MR. STONE: It's exactly the point.

12 THE COURT: Okay. Do you know, because I do not know,  
13 which debtor pays the money?

14 MR. STONE: It's -- as I understand it, and the  
15 debtors can certainly --

16 THE COURT: Yeah; I --

17 MR. STONE: -- correct it, there --

18 THE COURT: -- I want --

19 MR. STONE: -- there's an -- yeah. There's an  
20 allocation based on how many directors and officers are in each  
21 of the debtors.

22 THE COURT: So the two debtors, then, pony up together  
23 the aggregate amount that would go into this insurance?

24 MR. STONE: That's my understanding.

25 THE COURT: I mean, it's -- we can call it insurance,

PG&E Corp., Pacific Gas and Electric Co.

1 but it really isn't.

2 MR. STONE: No. It's --

3 THE COURT: It's self-insurance and it has a fancy  
4 name, but it's self-insurance.

5 MR. STONE: That's exactly what it is.

6 THE COURT: I learned a long time ago in bankruptcy  
7 that self-insurance means no insurance, right, and that --

8 MR. STONE: That's correct.

9 THE COURT: Okay. So what's different about this one,  
10 and isn't?

11 MR. STONE: I don't think there's any difference.  
12 They say that, well, it's different because we have a policy  
13 and you can only claim against the money if you satisfy that  
14 policy. But that's a policy of their own making.

15 THE COURT: It's like putting the money under the  
16 carpet and saying --

17 MR. STONE: Right.

18 THE COURT: -- I'll draw on it anytime in the next  
19 five years if I need it. But in the meantime, creditors won't  
20 have any right to any of it. Right?

21 MR. STONE: That's correct, Your Honor. That's our  
22 point.

23 THE COURT: Mr. Tsekerides, you want to defend this --

24 MR. TSEKERIDES: Absolutely, Your Honor. In fact, I  
25 think we've got very good arguments. And let me address a few

PG&E Corp., Pacific Gas and Electric Co.

1 points --

2 THE COURT: But I have a preliminary question for  
3 you --

4 MR. TSEKERIDES: Sure.

5 THE COURT: -- because I want to clarify one point in  
6 the reply. And really, I must say I was disappointed in the  
7 way this came out, because it seemed like kind of a very simple  
8 motion and then, once the committee opposed it, the way I got  
9 the response was not impressive, because what I got is a  
10 tutorial on the rules of business judgment as though I'm not  
11 familiar with it and the committee isn't familiar with it.

12 And then secondly, this notion about -- well, here's  
13 where I'm confused: On page 6, you say you would be asking far  
14 too much for directors of a public company, et cetera, et  
15 cetera, "to continue to sit in such capacity without the  
16 certainty of a D&O insurance. That protection and safety valve  
17 is ubiquitous among similarly situated companies, and the  
18 debtors have undertaken exhaustive efforts to obtain  
19 appropriate level of coverage." What does that mean? Do you  
20 have any evidence that it's ubiquitous in --

21 MR. TSEKERIDES: Well, I think every -- I'm sure  
22 you've dealt with it yourself, Your Honor. Every company has  
23 D&O coverage. To ask --

24 THE COURT: Well, I know, but in the middle of their  
25 bankruptcy they don't set aside another fifty million worth.

PG&E Corp., Pacific Gas and Electric Co.

1 MR. TSEKERIDES: Well --

2 THE COURT: That's -- so that's what's not --

3 MR. TSEKERIDES: Well --

4 THE COURT: -- normal.

5 MR. TSEKERIDES: -- if I may, Your Honor. First, let  
6 me address, though, your concern about the filing. There was a  
7 supplemental objection from the committee, that we got the  
8 Friday after July 4th.

9 THE COURT: I know.

10 MR. TSEKERIDES: So we had --

11 THE COURT: That's because they heard from your  
12 witness.

13 MR. TSEKERIDES: No, but -- and the witness -- and we  
14 can submit the transcript. The witness had personal knowledge,  
15 Your Honor. They were upset that she didn't read every --

16 THE COURT: No --

17 MR. TSEKERIDES: -- every email.

18 THE COURT: -- you miss my point. I don't expect her  
19 to know everything. If she -- if her original declaration  
20 said, "I talked to the counsel, I talked to the insurance  
21 broker, I collected all this information, and here's my  
22 conclusion," I don't have a problem with that.

23 MR. TSEKERIDES: But it did --

24 THE COURT: But what I got was her -- her declaration  
25 sounded like it's a done deal, there're no -- it's all clear as

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1 can be. And it isn't.

2 MR. TSEKERIDES: Well, her declaration did refer to a  
3 line on the broker. But let me get -- let me get to the  
4 merits, then, Your Honor. First of all, the debtor could have  
5 gone out and bought a regular insurance policy and spent the  
6 money, and presumably we wouldn't be having any discussion. So  
7 if they made an assessment that they needed coverage for the  
8 directors and officers, new directors and officers, for new  
9 claims, they'd be entitled to go buy that.

10 THE COURT: Well, maybe --

11 MR. TSEKERIDES: This is not --

12 THE COURT: -- maybe in bankruptcy; maybe they would.

13 MR. TSEKERIDES: Well --

14 THE COURT: Now, come on.

15 MR. TSEKERIDES: -- the --

16 THE COURT: I mean, that's not exactly --

17 MR. TSEKERIDES: No, but --

18 THE COURT: -- a certainty.

19 MR. TSEKERIDES: -- the same argument's here. And I  
20 think it's important for the Court to appreciate that. And  
21 we've submitted the correspondence; this was in the  
22 declaration. They questioned it, so we put in the  
23 correspondence. The primary carrier has said they believe, at  
24 least preliminarily, that the 2018 --

25 THE COURT: I know.

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1 MR. TSEKERIDES: -- fires are going to relate back to  
2 the --

3 THE COURT: I --

4 MR. TSEKERIDES: -- 2017 fires.

5 THE COURT: I read that last night.

6 MR. TSEKERIDES: Okay. Well, that was in the original  
7 papers, too, Your Honor, in fairness to us.

8 THE COURT: Yeah, but they were more -- it was much  
9 more specific. Go ahead. All right.

10 MR. TSEKERIDES: Okay. So if there's a 2019 --

11 THE COURT: And -- wait. The committee (ph.) doesn't  
12 necessarily accept that term; does it?

13 MR. TSEKERIDES: It doesn't but, again, I mean, the  
14 reason why we're doing this is because there's uncertainty.  
15 The reason you buy insurance is for uncertainty. If it was a  
16 certainty, you wouldn't need it.

17 THE COURT: And the reason why insurers sometimes make  
18 reservations of rights and end up with a separate lawsuit to  
19 determine the extent of policy coverage is they've got  
20 parallels in an underlying lawsuit; right? So if you had to,  
21 you could bring a separate dec-relief action against the  
22 insurer to determine what is or isn't covered.

23 MR. TSEKERIDES: And in the meantime, the directors  
24 and officers are hung out to dry, which isn't fair.

25 THE COURT: Maybe.



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1 MR. TSEKERIDES: And I want to make a point. This is  
2 not sticking money under the rug. This isn't some  
3 featherbedding.

4 THE COURT: I didn't mean it as a pejorative. I meant  
5 it as taking fifty million dollars that is not available for  
6 other needs in this case.

7 MR. TSEKERIDES: And if they bought regular insurance  
8 for fifty million dollars, that wouldn't be available either.  
9 But this is a real insurance policy; that's the difference.  
10 It's in fact to keep it out of being able to be (sic) into the  
11 estate, that they're doing it --

12 THE COURT: I know.

13 MR. TSEKERIDES: -- in the first place --

14 THE COURT: But it is --

15 MR. TSEKERIDES: -- to make sure the money's  
16 available.

17 THE COURT: But it is a form of self-insurance.

18 MR. TSEKERIDES: Well --

19 THE COURT: You know it and I know it. Come on, with  
20 all these labels on there, when you hand somebody fifty million  
21 dollars and say, "Please give it back at the end of five years  
22 if we don't need it," then it's a form of self-insurance.

23 MR. TSEKERIDES: The difference -- respectfully, Your  
24 Honor, the difference is that the money is not available to  
25 other people to try to grab --

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1 THE COURT: I know.

2 MR. TSEKERIDES: -- in the meantime.

3 THE COURT: I know.

4 MR. TSEKERIDES: And that's important.

5 THE COURT: Of course it isn't.

6 MR. TSEKERIDES: And if you're a director or an  
7 officer, that's important. If you were a --

8 THE COURT: I --

9 MR. TSEKERIDES: -- director, you'd want to make sure  
10 the money was there, not that a committee can come and object  
11 or a court say, no, you can't get a payment later.

12 THE COURT: Mr. Tsekerides, my questions are not  
13 intended to criticize the officers and directors but rather to  
14 question whether it's appropriate, in the bankruptcy, to set  
15 aside this money. Whether you call it a trust or under the rug  
16 or anywhere in between, it still means fifty million dollars is  
17 not available for other needs in this case; right?

18 MR. TSEKERIDES: That's true, but --

19 THE COURT: Okay.

20 MR. TSEKERIDES: -- I think if you look at the reasons  
21 why the company did it, one -- the relation back is a big  
22 issue. Yeah, I mean, we're not looking to have other  
23 litigation and tell the directors and officers, well, why don't  
24 you see what happens with that coverage dispute that might  
25 happen later. In the meantime if a claim comes in, they need

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1 the coverage.

2 So the relation back is one issue. And two, the  
3 priority, which counsel referred to -- the priority in the  
4 policy, in the 2018 policy, is for pre-petition claims. So,  
5 yes, there's --

6 THE COURT: Well, I know; that's the priority. I  
7 understand.

8 MR. TSEKERIDES: Right. And so if a claim comes in  
9 today against a new director and the insurance company says,  
10 well, the priority's for the pre-petition, they might not have  
11 coverage. And we appreciate that there's a lot of money there;  
12 we know that. But there's a risk. And the debtor's assess --  
13 Ms. Markland has been doing this for at least five years as a  
14 D&O, and she's here in the courtroom if you have any  
15 questions --

16 THE COURT: I don't --

17 MR. TSEKERIDES: -- for her.

18 THE COURT: I don't question her judgment on it, but  
19 she hasn't been doing it in a bankruptcy with the priorities  
20 and the post-petition anomalies that you and I and all the  
21 bankruptcy world deal with every day, which is different.

22 MR. TSEKERIDES: Right. All the more reason --

23 THE COURT: Okay.

24 MR. TSEKERIDES: -- then, in a bankruptcy, to have you  
25 then recognize what the risks are. Fifty million dollars isn't

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1 going to break the bank in this case, but fifty million dollars  
2 is the same amount of the Side A coverage in the 2017 policy,  
3 and that would be put aside and available to these officers and  
4 directors. It's not like we're administratively insolvent.  
5 When bills come in, we're paying them. Fifty million dollars  
6 in this case is a joke.

7 THE COURT: Well --

8 MR. TSEKERIDES: And the fact that they're making a  
9 big deal --

10 THE COURT: -- tell that to the fire victims.

11 MR. TSEKERIDES: And we put --

12 THE COURT: It's not a joke.

13 MR. TSEKERIDES: -- a hundred million aside recently  
14 for the fire victims. But --

15 THE COURT: Well, I understand. So far, they haven't  
16 gotten any of it yet. So --

17 MR. TSEKERIDES: Well, that's in --

18 THE COURT: So I --

19 MR. TSEKERIDES: -- someone else's hands.

20 THE COURT: We can agree that it's not a joke. It's  
21 fifty million dollars. There are some certain New York Times  
22 tests here, you know. That's your paper. New York Times tests  
23 is when -- how does it look in The New York Times. Well, the  
24 company just set aside fifty million dollars for its new  
25 officers and directors.

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1 MR. TSEKERIDES: Well, and --

2 THE COURT: That has a certain --

3 MR. TSEKERIDES: There's never a good headline --

4 THE COURT: -- optics to it.

5 MR. TSEKERIDES: -- for a company, but --

6 THE COURT: Correct.

7 MR. TSEKERIDES: -- but what we would say --

8 THE COURT: I know that.

9 MR. TSEKERIDES: But in court, we don't deal in  
10 headlines; we deal in facts and the law.

11 THE COURT: Right.

12 MR. TSEKERIDES: And here --

13 THE COURT: But that's why I don't want you to call it  
14 a joke.

15 MR. TSEKERIDES: Well, in the context of this case,  
16 we're talking about billions in claims.

17 THE COURT: We are.

18 MR. TSEKERIDES: For us to be fighting about fifty  
19 million, at the risk of leaving the directors high and dry,  
20 maybe it's not a joke, but if you're a director you're going to  
21 be worried about it.

22 THE COURT: No, that's true. I don't disagree with  
23 that.

24 MR. TSEKERIDES: And I want to make this point: If  
25 the --

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1 THE COURT: But they all came on without that fifty  
2 million. Right?

3 MR. TSEKERIDES: Right, they all came on without that,  
4 but --

5 THE COURT: Okay.

6 MR. TSEKERIDES: -- from a timing perspective, I don't  
7 know if they came on and then the assessment took place, where  
8 they knew there was coverage but then the insurer sent letters  
9 in January and May saying --

10 THE COURT: Right.

11 MR. TSEKERIDES: -- hey, look, we're taking these  
12 certain positions. But I think it's important to recognize, if  
13 the policy is never used, and we can cancel it any time, if we  
14 figure out that, you know what, we're not going to need it, we  
15 can --

16 THE COURT: No, I know that. You made that clear. I  
17 mean, look, I -- to me, that's exactly why it's more like under  
18 the rug than calling it an insurance policy. You know? So --

19 MR. TSEKERIDES: But insur --

20 THE COURT: -- when you pay insurance on your house or  
21 on your car, you pay insurance and you hope never to have to  
22 make a claim. But at the end of the period, the insurance  
23 company doesn't give it all back to you.

24 MR. TSEKERIDES: Right, so this is the --

25 THE COURT: Okay?

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1 MR. TSEKERIDES: -- benefit to having --

2 THE COURT: And this is different.

3 MR. TSEKERIDES: -- a policy like this.

4 THE COURT: But that's all I'm saying. It's not  
5 traditional insurance.

6 MR. TSEKERIDES: Well --

7 THE COURT: It's self-insurance.

8 MR. TSEKERIDES: Well, captives, by their very  
9 nature -- and I don't want to get into insurance, but captives,  
10 by their very nature -- that's how they work, Your Honor: you  
11 put money aside and --

12 THE COURT: I know that.

13 MR. TSEKERIDES: But here --

14 THE COURT: I know that.

15 MR. TSEKERIDES: -- my point is, if we don't use it,  
16 we get it back. And if we use it, that means we needed it.  
17 And then who's going to --

18 THE COURT: That's right.

19 MR. TSEKERIDES: -- tell the officers and directors,  
20 you know what, I know, if you actually triggered this, that  
21 means you needed it, but you can't have it right now?

22 THE COURT: Well, let's go back to the point that we  
23 were -- Mr. Stone made. The company, as you just said, without  
24 calling it a joke, it is -- it's paying its debts as they come  
25 due. And if there is a claim for a post-petition fire and

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1 somehow an aggressive plaintiff's lawyer decides to name  
2 individual officers and directors as defendants for the fire  
3 that follows, which could happen, then the company still can  
4 cover its indemnity to those entities, can't it --

5 MR. TSEKERIDES: It's sure --

6 THE COURT: -- those officers and directors?

7 MR. TSEKERIDES: It's sure that it could, but --

8 THE COURT: And if it's administratively insolvent,  
9 we've got some bigger problems.

10 MR. TSEKERIDES: Right. But I would say there -- it's  
11 not, like, immediate payment. Other people could object. We  
12 don't know what the -- they're objecting to having a policy.  
13 They might object to them coming forward and asking for the  
14 indemnity.

15 What this does, like most insurance, if not all  
16 insurance, is it buys certainty for the directors and officers  
17 that fifty million dollars, which is the exact same amount of  
18 the 2017 policy, will be there no matter what. If the policies  
19 below don't trigger, you get this. If the insurers win, you  
20 get this. And you know what? If the insurance company loses  
21 on the relating back or the priority --

22 THE COURT: No, I understand.

23 MR. TSEKERIDES: -- doesn't exhaust it --

24 THE COURT: I understand. I understand.

25 MR. TSEKERIDES: -- then we get the money back.



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1 THE COURT: Well, maybe you'll get it back. Maybe  
2 you'll get it back in five years. I mean, my point is I -- I  
3 understand, and I don't disagree with what you're saying. It  
4 really comes down to whether the unsecured creditors' committee  
5 have a voice -- I didn't make this up on my own, and I don't  
6 want to speculate on whether I would have responded if there  
7 had been no objection. But the unsecured creditors' committee  
8 is concerned about fifty million dollars -- I won't say "flying  
9 out the window", okay? I'll say "going under the rug". You  
10 can say "going to the captive". It's the same concept.

11 MR. TSEKERIDES: And they have every right, and that's  
12 their job. And --

13 THE COURT: That's their job.

14 MR. TSEKERIDES: And our point is we're explaining to  
15 the Court -- and Ms. Markland testified and she's willing to  
16 take the stand, if you need her to, here. But she put in  
17 papers as to why the company needs this for the new Ds and Os,  
18 recognizing the real risks -- and unlike Mr. Stone, I can't  
19 predict the future as to what's going to happen -- the real  
20 risk that the relation back or the prioritization will mean no  
21 coverage for a new claim. And that's what this is for: to  
22 remove that uncertainty in the amount of fifty million dollars.  
23 And if it's not needed, we can cancel the policy. It's not  
24 five years --

25 THE COURT: Well, come on. Let's --

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1 MR. TSEKERIDES: -- under the rug for five --

2 THE COURT: Let's -- you and I know that particularly  
3 as -- all we have to do is read the paper this morning. And  
4 how many articles in the paper today showed pictures of the  
5 fires? Okay? I live in the East Bay, where we had helicopters  
6 flying over, yesterday. And PG&E is flying helicopters over,  
7 inspecting for fire. And my neighbors were happy to hear that  
8 PG&E is flying over their house, making a lot of noise with the  
9 helicopters looking for fire damage.

10 So it's a real thing. And I live in the Bay Area. I  
11 don't live in Paradise. So it's for real. And realistically,  
12 Mr. Tsekerides, that money isn't going to be coming back for a  
13 while, no matter what, you know it and I know it, because we've  
14 got to get through the fire season and perhaps out the door  
15 with a confirmed plan in a reasonable period of time. Right?

16 MR. TSEKERIDES: Okay, Your Honor, but if we went and  
17 bought traditional insurance --

18 THE COURT: I understand.

19 MR. TSEKERIDES: -- which the market didn't bear, it  
20 would never come back.

21 THE COURT: I understand that.

22 MR. TSEKERIDES: At least within five years, we can  
23 represent that it could come back --

24 THE COURT: It could come back.

25 MR. TSEKERIDES: -- if there's no claim. If something

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1 happens with the coverage disputes, where the underlying  
2 policy's the 20- --

3 THE COURT: No, I understand. I don't disagree with  
4 that. And I'm not making light of it. Can you clarify for me  
5 the allocation and who should be paying what? In other words,  
6 what I don't know -- I think Mr. Karotkin said it to me at one  
7 point early in the case -- is the alignment of the boards.  
8 There is some commonality but there're some people who are only  
9 on one and not on the other; right?

10 MR. TSEKERIDES: I'll do the best I can.

11 THE COURT: Yeah.

12 MR. TSEKERIDES: I can't tell you for sure. It is  
13 split.

14 THE COURT: Is --

15 MR. TSEKERIDES: It is allocated between the utility  
16 and the corporation. But I couldn't tell you, standing here  
17 right now --

18 THE COURT: You don't have to tell me the dollar --  
19 just tell me generally. Am I correct, there are some  
20 directors -- let's focus on directors.

21 MR. TSEKERIDES: Right.

22 THE COURT: There're some directors of the parent but  
23 not the utility, and --

24 MR. TSEKERIDES: That's correct.

25 THE COURT: -- vice versa? But there're some who are

PG&E Corp., Pacific Gas and Electric Co.

1 directors of both?

2 MR. TSEKERIDES: That's right.

3 THE COURT: Right? And is that same true with the  
4 officers? I don't know.

5 MR. TSEKERIDES: I don't know.

6 I don't know. Do you know?

7 THE COURT: Mr. Karotkin, just a general view; if you  
8 can just explain that.

9 MR. KAROTKIN: I think it --

10 THE COURT: And I don't need a corporate chart. I  
11 need an overview.

12 MR. KAROTKIN: No, no. I think it's true with a few  
13 officers.

14 THE COURT: As being in both?

15 MR. KAROTKIN: Yes.

16 THE COURT: Okay. But some --

17 MR. KAROTKIN: And some only being --

18 THE COURT: And some not?

19 MR. STONE: And some only being in one.

20 THE COURT: And some not. Okay, so that's good  
21 enough. So --

22 MR. TSEKERIDES: Okay.

23 THE COURT: -- it's a hybrid. And then the  
24 allocation -- the -- whether it goes to the insurance company  
25 or it goes under the carpet, there are two money -- two sources

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1 of money coming in; right? The parent and the sub are --

2 MR. TSEKERIDES: Oh, yes. Um-hum.

3 THE COURT: -- contributing on a ratio that's  
4 consistent with that?

5 MR. TSEKERIDES: Correct.

6 THE COURT: And I mean, look --

7 MR. TSEKERIDES: I just don't know what that is.

8 THE COURT: -- it's important to me to hear this,  
9 because, again, I'm not going to criticize you but I'm not  
10 going to say that fifty million is a joke. Is -- we have some  
11 other motions coming up in a few weeks that are significant,  
12 and I'm sure you're aware of that.

13 MR. TSEKERIDES: I am.

14 THE COURT: And I have to -- I have to figure out,  
15 well, is the utility paying for the officers and directors of  
16 the parent, or vice versa, and, if so --

17 MR. TSEKERIDES: Hmm.

18 THE COURT: -- is that appropriate. If your answer --

19 MR. TSEKERIDES: I don't think so.

20 THE COURT: -- is no, I'll take --

21 MR. TSEKERIDES: Right.

22 THE COURT: -- your word for it.

23 MR. TSEKERIDES: Yeah.

24 THE COURT: And the committee hasn't raised that, and  
25 I'm -- it's a close subject, because you said it, and I'll

PG&E Corp., Pacific Gas and Electric Co.

1 accept it.

2 So -- okay, so there's an allocation.

3 MR. TSEKERIDES: Right.

4 THE COURT: And if I approve it, then Ms. Markland  
5 then will figure out a way, and two -- in theory, two checks'll  
6 go: one from each of the two companies. And the fact that  
7 some individuals are in both, they're getting double coverage,  
8 if you will. And those who are only affiliated with the parent  
9 and those only with the utility, they're --

10 MR. TSEKERIDES: Right. They're getting coverage for  
11 their actions for that --

12 THE COURT: They're getting coverage for their role.

13 MR. TSEKERIDES: -- position.

14 THE COURT: Okay.

15 MR. TSEKERIDES: And if I may. So maybe I used the  
16 New York street vernacular for "insignificant". What I meant  
17 by "joke" was, in the context of this case, is this a drop in  
18 the bucket.

19 THE COURT: And I do understand that.

20 MR. TSEKERIDES: Okay.

21 THE COURT: I'm looking at the fee appli -- the  
22 quarterly fees coming in. No comment.

23 MR. TSEKERIDES: No comment. Yeah.

24 THE COURT: Okay, anything further?

25 MR. TSEKERIDES: I don't think so, Your Honor.

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1 THE COURT: Anyone else other than Mr. Stone? Anyone  
2 want to be heard? Nobody -- no one other -- no other party  
3 filed anything, but if there's anyone that wants to be heard --

4 Yes, sir.

5 MR. DE GHETALDI: Good morning, Your Honor. Dario de  
6 Ghetaldi on behalf of --

7 THE COURT: Mr. de Ghetaldi, I do recognize you these  
8 days. A couple of times you've showed up and you probably  
9 think I don't remember your name, and I do.

10 MR. DE GHETALDI: Yeah.

11 THE COURT: I appreciate your stating your name,  
12 but -- thank you for coming back. What can I --

13 MR. DE GHETALDI: Thank you, Your Honor. I -- just  
14 briefly. We weren't able to see any of the underlying  
15 documents here, I think because of the protective order and our  
16 inability to access documents --

17 THE COURT: Well, some of them --

18 MR. DE GHETALDI: -- under the current --

19 THE COURT: -- were sealed. I mean, it's --

20 MR. DE GHETALDI: -- current form -- right.

21 THE COURT: Apart from the protective order, some of  
22 it was under the traditional sealing because of the nature of  
23 the --

24 MR. DE GHETALDI: Understood, Your Honor. But I  
25 apologize; I haven't seen all of the documents. But I was just

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1 sitting here thinking, given my experience with litigating  
2 against PG&E, including a derivative case against PG&E, arising  
3 out of the San Bruno fire, I think -- maybe I'm wrong, but I  
4 think that this is insurance that is related -- that would come  
5 into play in derivative litigation primarily, and the money  
6 would be going actually back to the company.

7 THE COURT: I don't -- Mr. --

8 MR. DE GHETALDI: Maybe I'm wrong, but that was just  
9 a --

10 THE COURT: -- Tsekerides can clarify, but I don't  
11 understand that these are all based on derivative actions.

12 MR. TSEKERIDES: No, they're not.

13 MR. DE GHETALDI: That was just a thought that I had,  
14 Your Honor, and --

15 THE COURT: Well, we have a -- we have a pending  
16 adversary proceeding. Right? The --

17 MR. TSEKERIDES: Right.

18 THE COURT: The newly filed adversary proceeding.  
19 It's a refiling.

20 MR. TSEKERIDES: That's right. And that's a  
21 securities action, not a derivatives action.

22 THE COURT: Right. Yeah.

23 MR. DE GHETALDI: Okay. All right.

24 THE COURT: That's what I thought.

25 MR. DE GHETALDI: Okay. Well, to the extent that they



PG&E Corp., Pacific Gas and Electric Co.

1 are related to derivative actions --

2 THE COURT: Well, but, I mean, in a sense -- I mean --  
3 yeah, but I think Mr. Tsekerides' theory -- his argument is  
4 that, if there're no claims, the money goes back to the company  
5 because it's self -- what I call self-insurance. In the  
6 derivative action, a successful derivative action, it goes back  
7 to the benefit of the share -- that's a nice argument but, in a  
8 company that may or may not be insolvent -- I'm assuming --  
9 they're assuming solvency here. But imagine if the company  
10 were insolvent; it has a different outcome.

11 MR. DE GHETALDI: Right. And the other thing that I  
12 don't know and I just wanted to bring this up, Your Honor, is  
13 that I have taken Ms. Markland's deposition in the past, I have  
14 taken Geisha Williams' deposition in the past, both relating in  
15 part to issues of insurance. And the existence -- the policies  
16 that this company has are unique, at least the ones that I've  
17 seen, in that a number of them have excess provisions that  
18 cover intentional conduct, and that would cover punitive  
19 damages, which --

20 THE COURT: Well, but that -- I don't know that that's  
21 relevant here.

22 MR. DE GHETALDI: I don't either, but --

23 THE COURT: I mean --

24 MR. DE GHETALDI: -- these are policies, Your Honor,  
25 that, if we're talking about similar coverage, that coverage is

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1 not legal in California and can only be obtained from overseas  
2 carriers coming out of --

3 THE COURT: Well, I don't believe --

4 MR. DE GHETALDI: -- Bermuda and London.

5 THE COURT: -- I don't believe there's --

6 MR. DE GHETALDI: And I just don't -- I don't know. I  
7 just wanted to raise that possibility.

8 THE COURT: Well, the creditors' committee hasn't  
9 raised that issue, and I don't think there was any reference to  
10 it in the papers. And as I recall --

11 Mr. Tsekerides, am I right; it's a South Carolina --

12 MR. TSEKERIDES: That's --

13 THE COURT: -- corporation; right?

14 MR. TSEKERIDES: That's correct, Your Honor --

15 THE COURT: And --

16 MR. TSEKERIDES: -- South Carolina.

17 THE COURT: And that doesn't mean it doesn't have some  
18 offshore consequences. But I'm assuming that this is a lawful  
19 activity.

20 MR. TSEKERIDES: That's my understanding, yeah.

21 THE COURT: And --

22 MR. DE GHETALDI: Okay.

23 THE COURT: And, Mr. de Ghetaldi, if we -- Mr.  
24 Tsekerides didn't like my metaphor but, if I put fifty million  
25 dollars under the rug and said no creditor can get it, and five

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1 years later it goes back to the company, that's not illegal; is  
2 it? And it doesn't -- it's not offshore laundering; it's  
3 just --

4 MR. DE GHETALDI: It's not illegal, Your Honor, but,  
5 as the --

6 THE COURT: It's protecting your money.

7 MR. DE GHETALDI: As the Court observed, this is not  
8 peanuts, this is not something that is nothing, compared to the  
9 individuals who have lost their homes, some of whom are  
10 homeless still, living in --

11 THE COURT: Well, I understand, and --

12 MR. DE GHETALDI: -- hotels and tents and --

13 THE COURT: -- and that's why --

14 MR. DE GHETALDI: -- trailers.

15 THE COURT: -- that's why the question of the motions  
16 that are coming up next month -- later this month, about the  
17 Tubbs Fire and about -- those are all relevant. But the only  
18 question here is whether the individuals who are serving as  
19 officers and directors get this extra protection that's been  
20 argued. No one's suggested that any of them have done anything  
21 wrong or inartfully. You might -- you, in your various  
22 complaints, might have alleged some wrongdoing but, in terms of  
23 this context and the -- this is where I do look to the general  
24 unsecured creditors' committee -- and I might add the tort  
25 victims' committee have (sic) not taken a position on this.

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1           So that suggests to me that we're not dealing with  
2 anything that's kind of unusual -- well, it's unusual, but it's  
3 not out of the realm of the situation we have here and the  
4 reasons why the company wants this kind of protection for the  
5 officers and directors.

6           MR. DE GHETALDI: All I'm saying, Your Honor --

7           THE COURT: Okay.

8           MR. DE GHETALDI: -- is that I have not had access to  
9 all of the documents --

10          THE COURT: Yeah. I understand.

11          MR. DE GHETALDI: -- and these are my concerns.

12          THE COURT: Okay. Thank you.

13          MR. DE GHETALDI: Thank you.

14          THE COURT: Mr. Stone, you want to close?

15          MR. STONE: I don't have a lot to add, Your Honor. I  
16 think I would just reiterate again that this -- we believe that  
17 this really is just a self-insurance program and that this is  
18 tantamount to granting a superpriority administrative claim.  
19 As Your Honor mentioned --

20          THE COURT: Well, but do you also accept a couple of  
21 things that Mr. Tsekerides and I talked about: that if we tell  
22 the officers and directors the Court is going to allow this  
23 set-aside -- again, we won't call it "under the rug"; we don't  
24 have to have words like "a captive cell". The concept is fifty  
25 million dollars is available tomorrow that isn't available

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1 today in case these officers and directors need it. But it's  
2 also true that that money is coming back to the company if the  
3 claims are not asserted. You don't disagree with that?

4 MR. STONE: I don't disagree with that.

5 THE COURT: And so that's what makes it unlike your  
6 run-of-the-mill kind of insurance for casualty insurance or  
7 liability insurance or professional malpractice, et cetera.  
8 It's -- you're earning it as you -- as time goes by.

9 But where is the outcome if I say no today? And then  
10 what do we do? In other words, do we really wait until there's  
11 another fire and then wait until the existing insurance decides  
12 to play hardball on the coverage and then we tell the officers  
13 and directors, well, you know, the company will probably cover  
14 you because they're paying the debts as they come due, but you  
15 don't have this kind of assurance? That's not a good message  
16 to send; is it?

17 MR. STONE: Well, I don't think it's a -- I don't  
18 think it puts directors in a terrible position, because I think  
19 that, if there is another fire and/or the insurance company  
20 plays hardball on the coverage, that would be a time when they  
21 could -- the debtors could come to the Court and say, there  
22 really is a need here, let's -- allow us to do the self-  
23 insurance program now.

24 THE COURT: But if there's another horrible fire, a  
25 big one, then we have another problem that -- it's like the

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1 elephant in the room; we have a post-petition claim that's  
2 measured in billions and what to do about them and whether the  
3 government or --

4 MR. STONE: True.

5 THE COURT: -- the legislature or anybody else deals  
6 with it. The bankruptcy law tells us what the answer is for  
7 bankruptcy law; right? And it's not a pleasant law for anyone,  
8 but it's a fact of life that would be true. Don't you agree?  
9 If a camp fire happens next month, we have some significant  
10 post-petition exposure for the estate.

11 MR. STONE: For the estate? Absolutely.

12 THE COURT: Right?

13 MR. STONE: For officers and directors, it's more  
14 tenuous.

15 THE COURT: Well, I mean, it should be more tenuous,  
16 because hopefully they don't have any culpability. But --  
17 that's easy for you and me to say but, when they get served  
18 with a summons and they say, who's protecting me -- I mean, we  
19 do want officers and directors running the company; don't we?

20 MR. STONE: We do.

21 THE COURT: Maybe some people might want --

22 MR. STONE: And --

23 THE COURT: -- different officers and directors, but  
24 these are the ones that we got.

25 MR. STONE: Well, and these are the ones who signed

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1 up --

2 THE COURT: That's right.

3 MR. STONE: -- to be officers and directors, with  
4 these policies in place, with the very same provisions in place  
5 that relate back, and with the very same provision in place  
6 that says that pre-petition claims are favored.

7 THE COURT: Well, it's interesting; it's -- pre-  
8 petition claims are favored as a matter of insurance law; post-  
9 petition claims are favored as a matter of bankruptcy law. So,  
10 guess what? If you're a fire victim, as horrible as that may  
11 be, you have the better outcome, because you have the insurer  
12 to look to you (sic) for your pre-petition claims, and the  
13 estate and/or the bankruptcy law for your post-petition claims.  
14 And I guess Mr. Tsekerides is right; on the grand order of  
15 things, it's not a lot of money relative to the entirety of the  
16 exposure here.

17 MR. STONE: Well, I'm sure my clients'd be happy to  
18 have another fifty million dollars put in their pocket.

19 THE COURT: Well, but that gets back to the question  
20 of the plan. In other words, if there -- the perception is --  
21 I'm sure your client knows as well as I do, is that the  
22 creditors will be paid. And if the creditors are paid, then  
23 setting aside this amount of money for the benefit of the  
24 officers and directors is of no consequence.

25 MR. STONE: If the creditors are paid, we can all go

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1 home.

2 THE COURT: Well, but I want -- I guess I'm -- I'm  
3 going to -- it's my decision and I'll make it. But the  
4 question is why is this a good thing -- why is denying the  
5 motion a good thing from the point of view of the unsecured  
6 creditors' committee?

7 MR. STONE: Because --

8 THE COURT: Why is your client better off for purposes  
9 of how the bankruptcy might have a proper conclusion? It's too  
10 early to think about it, but I read in the papers it's going to  
11 be done in June. So why --

12 MR. STONE: Well, we all hope, Your Honor. But from  
13 our stand --

14 THE COURT: They don't know that the first one is  
15 still pending.

16 MR. STONE: From our standpoint, Your Honor, it's just  
17 what Your Honor mentioned in our previous exchange, which is  
18 that this is just taking money and putting it out of the reach  
19 of otherwise ordinary creditors. And we don't know what's  
20 going to happen.

21 THE COURT: Well, okay, but let's focus on that. Yes,  
22 and I can use my metaphor or his metaphor; so I'll go back to  
23 mine. I'm going to -- I'm being asked to let the company --  
24 companies put fifty million dollars under the rug for a rainy  
25 day, for the benefit of a small subset of people called



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1 officers and directors, who are well paid and well compensated  
2 but are also taking some risk here. And they are in the  
3 kitchen and they have -- and they're putting up with the heat.  
4 And I'm sure there's plenty of it in the kitchen.

5 If I deny the motion, it doesn't change the outcome  
6 for creditors. Your clients don't get fifty more million  
7 dollars, nor do the fire victims. What happens is that -- Mr.  
8 Tsekerides is correct -- a relatively small blip is still on  
9 the available-asset side of the equation, and the company,  
10 whether on its own or with a competing plan -- somebody's going  
11 to figure out a way to pay the creditors. And the deal isn't  
12 going to turn on this fifty million dollars under the rug.  
13 Isn't that true?

14 MR. STONE: Probably not --

15 THE COURT: It's just not --

16 MR. STONE: -- Your Honor.

17 THE COURT: It's just not --

18 MR. STONE: Yes.

19 THE COURT: It's not going to make a difference.

20 MR. STONE: It --

21 THE COURT: If I -- look, I made reference to the fire  
22 fund, and the fire fund was approved just over a month ago.  
23 And the other day I said to myself, well, when is some of that  
24 money going out to the victims? Now I realize there's been  
25 some activity -- you're probably familiar with it, or the

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1 committee is -- and progress is being made.

2 If I had a sense that denying this motion might  
3 somehow move the ball towards getting some money to the  
4 creditors -- and I won't say the fire victims; I'll say the  
5 creditor -- the universe of creditors -- that would be an  
6 argument in favor of telling the officers and directors, well,  
7 you'll just have to stay in the kitchen with the heat and we're  
8 not going to turn the temperature down. But there's no  
9 indication that that's going to happen. I mean, there either  
10 is or isn't going to be a plan in the near term. Right?

11 MR. STONE: Right.

12 THE COURT: So once again, I'm pinning you down: how  
13 is this going to make a real difference to creditors, whether  
14 they be fire victims or consensual creditors?

15 MR. STONE: I don't know that anyone today can answer  
16 that question.

17 THE COURT: Okay.

18 MR. STONE: Okay.

19 MR. TSEKERIDES: Your Honor, I think Mr. Karotkin  
20 wanted to --

21 MR. KAROTKIN: Can I say --

22 THE COURT: Yes. Sure, Mr. --

23 MR. KAROTKIN: Sorry, I -- having lost my voice -- too  
24 many airplane flights, Your Honor. It's Stephen Karotkin.

25 THE COURT: You haven't moved --

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1 MR. KAROTKIN: Well --

2 THE COURT: -- to California yet?

3 MR. KAROTKIN: Housing's too expensive in San  
4 Francisco.

5 THE COURT: Hey, we had an earthquake for you since  
6 you were --

7 MR. KAROTKIN: Two of them.

8 THE COURT: Yeah. Well, they were Southern California  
9 earthquakes, so --

10 MR. KAROTKIN: Yeah, I know.

11 Your Honor, I think you put your finger on it in the  
12 last few minutes when you addressed how is this really going to  
13 impact distributions under the plan, because it's not -- and I  
14 think that it's important to note, again, as you said, that --  
15 God forbid, God forbid there's another catastrophic wildfire --  
16 what Mr. Stone is asking these officers and directors to do is  
17 rely on the fact that they have administrative-expense claims  
18 which are pari passu, of course, with a post-petition  
19 catastrophic wildfire. And it's not fair to put them in that  
20 risk when all we're asking, Your Honor, is -- and again, it's  
21 not all we're asking, but it's to put fifty million dollars  
22 aside to give them the peace of mind that they have -- that  
23 they have the coverage.

24 And it's easy for Mr. Stone to say, don't worry,  
25 there's not a big risk of a lawsuit, there's not a big risk of

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1 being exposed to it. He's not going to be the defendant. And  
2 I think it's important to note that the directors and officers  
3 are entitled to that coverage. The money is not leaving the  
4 estate. And as Mr. --

5 THE COURT: Well, it kind of -- it's kind of leaving  
6 the estate.

7 MR. KAROTKIN: It's not, though.

8 THE COURT: It --

9 MR. KAROTKIN: It's there. It's an asset that will be  
10 available. And if it's not used, it comes back.

11 THE COURT: I mean, it's -- come on, it's like paying  
12 a retainer to a special counsel. I mean, if a lawyer gets  
13 hired and says, "I'll take" -- "I'll do something as long as I  
14 get my retainer in advance" --

15 MR. KAROTKIN: But it comes back, Your Honor.

16 THE COURT: -- we allow -- that's right. And if the  
17 lawyer doesn't use it up, he gives it back. But my point is  
18 we --

19 MR. KAROTKIN: And if there -- and if the --

20 THE COURT: -- we do it all the time.

21 MR. KAROTKIN: Right.

22 THE COURT: This is a different one.

23 MR. KAROTKIN: And if the company, as Mr. Stone is  
24 convinced of, is administratively solvent and will have the  
25 ability to provide the indemnification, all of the money will

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1 come back, with interest.

2 THE COURT: So we're going into this anomaly of  
3 saying, if the company -- everybody in the room presumes that  
4 the company is administratively solvent, and not only  
5 administratively solvent, it's going to pay its creditors,  
6 therefore what's the big deal of setting aside fifty million.  
7 But then the question then is, well, what if we're wrong on  
8 that? Then the question is, well, do the fifty million  
9 dollars -- have they been reallocated unfairly to the people  
10 that it should be --

11 MR. KAROTKIN: Again, Your Honor --

12 THE COURT: -- allocated to? Don't know.

13 MR. KAROTKIN: -- directors and officers are entitled  
14 to the protection of insurance. This was a very economical way  
15 to do this, and we think that it represents --

16 THE COURT: I don't disagree with that. I mean, look,  
17 again, the complexity of it and the -- but the simplicity of  
18 it, in a sense, is there. But -- and the committee didn't  
19 disagree, nor did I question the relatively minor cost of  
20 administering this thing. It's 100,000 dollars over five  
21 years.

22 MR. KAROTKIN: Exactly.

23 THE COURT: I mean, but again, it's your own money.

24 MR. KAROTKIN: And I will note, Your Honor, the tort  
25 committee, which obviously represents thousands and thousands

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1 of claimants, has no opposition or --

2 THE COURT: No, I know, and -- no one --

3 MR. KAROTKIN: -- objection to the relief.

4 THE COURT: -- no one but the unsecured creditors'  
5 committee.

6 MR. KAROTKIN: Thank you, sir.

7 THE COURT: I'll go ahead and grant the motion. I am  
8 on the fence about it. I was -- struggled with it in my own  
9 mind, and I was bothered by the way it came about. But I'm  
10 glad we resolved it today. I would have wished that it could  
11 have been played out a little more deliberately so that I and  
12 the unsecured creditors' committee and Mr. de Ghetaldi and  
13 anyone else would have a better sense of it. But at the end of  
14 the day, I think the presentation of counsel has explained it  
15 to me. And I don't mean to put Mr. Stone on the spot by trying  
16 to pin him down to say how does it really matter. That's not  
17 his role. His role is to do what the unsecured creditors'  
18 committee's supposed to do, and that is, second -- in  
19 appropriate cases, second-guess the debtor and have a reality  
20 check on whether the debtor should be doing it.

21 I'm not unsympathetic to the risks that any person who  
22 serves as an officer or director of a company like this -- it's  
23 constantly under criticism till the lights stay on, and then  
24 they get no thanks for it. It's not an easy job. And I wish  
25 it would be simpler. But I think -- not to put a label on it

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1 to say, well, I'm deferring to the debtors' judgment. I do  
2 defer to the debtors' judgment but, here, having considered the  
3 argument of the creditors' committee but, more importantly, the  
4 way it should work and the way -- and the way there is a  
5 minimal impact on creditors, notwithstanding the optics of it,  
6 it is true, I will probably read in the paper what you all read  
7 tomorrow: that the judge just handed over fifty million  
8 dollars to the officers and directors. That's not true. But I  
9 have to -- I will go ahead and grant the motion because I'm  
10 satisfied that the tradeoff of the benefit to maintaining the  
11 situation going forward outweighs what is almost a nonexistent  
12 present and a benefit to the universe of creditors: tort  
13 creditors and contractual creditors, who hopefully will be  
14 taken care of in a broader sense in the future.

15 So for all those reasons, I will overrule the  
16 committee's objections, thank Mr. Stone for the presentation  
17 and the argument and, Mr. Tsekerides, you too. And so I'll  
18 grant the motion for those reasons and I'll ask that -- I don't  
19 recall what the form of order says, but it's for the reasons  
20 stated on my comments that I just made is why I will grant the  
21 motion.

22 So let's go to the next one.

23 MR. TSEKERIDES: Your Honor, can Ms. Markland be  
24 excused?

25 THE COURT: Oh, sure. She never -- I mean, I

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1 didn't -- wasn't requiring her to be here.

2 Thank you, Ms. Markland, for coming.

3 MS. MARKLAND: Thank you.

4 THE COURT: All right, you want to -- so can I just  
5 ask, is there any ongoing objection to the retention of the  
6 Coblentz firm, based upon what Mr. Ficks has said? Any -- the  
7 tort committee? Are you -- or Mr. Ficks --

8 MR. FULLER: Your Honor, Lars Fuller of Baker &  
9 Hostetler, on behalf of the tort committee.

10 I think we are satisfied with the supplemental  
11 disclosure of Mr. Ficks, addressing the issue --

12 THE COURT: Okay, and is --

13 MR. FULLER: -- we had raised in our --

14 THE COURT: All right. Thank you, Mr. Fuller.

15 Is Ms. Pino on the phone or in court today?

16 MS. PINO: Good morning, Your Honor. Estela Pino  
17 appearing by phone. Your Honor, thank you for hearing this  
18 matter and allowing us to appear by phone.

19 Your Honor, we have carefully reviewed Mr. Ficks'  
20 supplemental declaration and we do not feel that it addresses  
21 the concerns we raised in our objection. The very contract  
22 entered into between the firm sought to be employed and the  
23 debtor provides that all applicable rules and regulations  
24 governing professional conduct have to be followed. And the  
25 contract also says that any actual or potential conflict with



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1 other parties that, if those exist, the other -- the law firm  
2 has to obtain written waivers from the other client.

3 THE COURT: Well, they have --

4 MS. PINO: And --

5 THE COURT: -- they only have -- they only have two  
6 clients; right? They have -- the Coblentz firm's clients are  
7 the City of Oakland and the debtor. So, I mean, your --

8 MS. PINO: Actually, there's a lot -- there's a lot of  
9 other clients that they represent. But as the Ghost Ship  
10 plaintiff's executive committee, we are very concerned about  
11 the issue with the City of Oakland. There is no evidence  
12 before the Court that the City of Oakland has given its written  
13 consent to the representation of the debtors by this firm. And  
14 it could have been addressed in the supplemental declaration  
15 that was filed, and it is not.

16 We do appreciate that Mr. Ficks has said that --  
17 addressed one of the TCC's concerns that Coblentz will not  
18 represent the debtors or matters relating to the Oakland-  
19 warehouse litigation in connection with claims estimation and  
20 the claims process. But they could have used this declaration  
21 to supplement the record regarding the written consent of the  
22 City of Oakland and others, like --

23 THE COURT: Well --

24 MS. PINO: -- the Caymus winery --

25 THE COURT: -- who's the other --

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1 MS. PINO: -- and they didn't.

2 THE COURT: Okay, so the representation here that they  
3 have advised Caymus regarding other matters -- but the issue on  
4 Oakland, the Ghost Ship -- Oakland is a defendant in the Ghost  
5 Ship, PG&E is a defendant in Ghost Ship. And the Coblentz firm  
6 has two clients who are defendants, who perhaps are not adverse  
7 to one another, but -- well, they may be, but Mr. Coblen -- I  
8 mean Mr. Ficks' firm is not getting in the middle of that.

9 So -- well, look, let me ask Mr. Ficks to respond.

10 You heard these comments. Can you solve the problem  
11 with a consent from Oakland?

12 MR. FICKS: Yes, Your Honor. We have it. We have a  
13 written consent from Oakland.

14 THE COURT: Okay. And you didn't have it when you  
15 gave me the declaration, but your representation is that it  
16 exists?

17 MR. FICKS: Yes, and --

18 THE COURT: I mean subsequent to this thing all  
19 surfacing?

20 MR. FICKS: No. It existed before, Your Honor. The  
21 declaration and my discussions with Ms. Pino were going on at  
22 the same time. So I did inform her yesterday by telephone that  
23 we had the written --

24 THE COURT: And what about --

25 MR. FICKS: -- consent.

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1 THE COURT: -- Caymus Vineyards?

2 MR. FICKS: There's no -- we're not representing  
3 Caymus Vineyards. They're not adverse to anything that my firm  
4 is involved with, with PG&E. There's no reason to get a waiver  
5 from them. We have no actual potential conflict. They have  
6 not --

7 THE COURT: They're not -- you're doing something  
8 unrelated to PG&E for Caymus, and unrelated to City of Oakland  
9 for Caymus; right?

10 MR. FICKS: Correct.

11 THE COURT: Ms. Pino, why do they need a waiver from  
12 Caymus, in your opinion? I don't know that they do, either.  
13 There might be good client relationships, but it's not legally  
14 required under the rules; is it?

15 MS. PINO: Well, Your Honor, I think it's required by  
16 the actual agreement that is attached as Exhibit B to the  
17 application to employ. But let's focus on the City of Oakland.  
18 The declaration does not state that they have the written  
19 consent of the City of Oakland.

20 THE COURT: But Mr. Ficks just --

21 MS. PINO: Rather --

22 THE COURT: But Mr. Ficks just made a representation  
23 on the record. Do you think he's making that up? I mean, I  
24 don't -- I --

25 MS. PINO: Well, Your Honor, I --

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1 THE COURT: Mr. Ficks isn't going to --

2 MS. PINO: -- I have --

3 THE COURT: -- come to court -- Ms. Pino, Mr. Ficks is  
4 not going to come into this court as an officer of the Court  
5 and represent to this Court that he has obtained a written  
6 consent from Oakland, if it's not true. And if you want me to  
7 make him -- you mean -- I don't even want to ask him, any more  
8 than I would ask you. Do you really want me to just not  
9 believe him?

10 MS. PINO: Your Honor, I think that perhaps that  
11 written consent should be submitted for your review.

12 THE COURT: That's none of my business. An officer of  
13 the Court, member of the California bar, has said he has a  
14 written consent from a defendant, who is also a client of his  
15 firm, in connection with a matter where the debtor, who seeks  
16 to employ Mr. Ficks' firm, is also employing the firm, in  
17 connection with that event. But he does not, and his firm does  
18 not, represent the parties against one another. They have a  
19 common interest.

20 I'm not going to do anything more than take his word  
21 for it. If he gave me a false statement, there are other  
22 consequences. But go ahead; anything else you want to add?  
23 Because I'm satisfied with that representation and I'm not  
24 going to -- I'm not going to review a document -- or a letter  
25 that an officer of the Court has said exists.

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1 So what else do you want -- anything else?

2 MS. PINO: That's it, Your Honor. Thank you for your  
3 time.

4 THE COURT: Okay. Well, to the extent -- and I'm not  
5 asking Ms. Pino to back down. I will, for the record, then,  
6 take Mr. Ficks' representation that he has the written consent  
7 from his other client and I don't need to see it. And I will  
8 overrule the remaining objection by the executive committee.  
9 The tort committee has, through Mr. Fuller's comments,  
10 indicated its satisfaction. So for those two reasons, then,  
11 the application will be granted.

12 And go ahead, Mr. Ficks, you can coordinate with  
13 counsel. I guess there already has been an order uploaded,  
14 so -- maybe not uploaded, but make sure it is uploaded in the  
15 normal fashion. Okay?

16 MR. FICKS: Thank you, Your Honor.

17 THE COURT: Okay. Thanks very much.

18 Thank you, Ms. Pino.

19 MR. KAROTKIN: Your Honor --

20 MS. PINO: Thank you, Your Honor.

21 THE COURT: Yes, sir?

22 MR. KAROTKIN: -- may I be excused?

23 THE COURT: Yeah. You want to --

24 MR. KAROTKIN: Thank you.

25 THE COURT: Are you leaving?

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1 MR. KAROTKIN: Yes.

2 THE COURT: Are we done?

3 MR. KAROTKIN: No.

4 THE COURT: Okay.

5 MR. KAROTKIN: Thank you, sir.

6 THE COURT: Don't buck (ph.) into the door.

7 MR. KAROTKIN: Not anymore. You fixed that.

8 THE COURT: All right, so we're down to the protective  
9 order?

10 MR. SLACK: Yes --

11 THE COURT: All right.

12 MR. SLACK: -- Your Honor.

13 THE COURT: Mr. Slack. Well, let --

14 MR. SLACK: So, Richard --

15 THE COURT: -- let me make -- okay, state your  
16 appearance, please.

17 MR. SLACK: I was just going to say, Richard Slack --

18 THE COURT: Yeah.

19 MR. SLACK: -- from Weil, for the debtors, Your Honor.

20 THE COURT: So I was reviewing the agenda that Ms. Kim  
21 (ph.) prepared, and going back through my notes from before,  
22 and I have to confess that I just simply couldn't keep up with  
23 the status of what's still pending. And I obviously want you  
24 to summarize what's still unresolved. And if there are other  
25 counsel in court or on the phone that want to be heard, I'll go

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1 down through every one of them. But I thought a number of them  
2 were resolved. So why don't you tell me what's unresolved.

3 MR. SLACK: That's true, Your Honor. So, first, as I  
4 think the Court is aware, the debtors, the UCC, and the TCC  
5 agreed on a protective order, which Your Honor entered.

6 THE COURT: Right.

7 MR. SLACK: And there's therefore, I think, broad  
8 creditor support for the protective order put in place by the  
9 Court.

10 Since that time, we have continued to discuss with the  
11 objectors, and I'm pleased to say that we've made progress and  
12 resolved what I think are two large groups of objectors. So we  
13 have resolved -- and I'm going to go through it in a second,  
14 Your Honor -- the NextEra objection and all of the joinders to  
15 the NextEra --

16 THE COURT: Oh.

17 MR. SLACK: -- objection.

18 THE COURT: Okay, that's one I was -- that was on my  
19 "open" list.

20 MR. SLACK: And we've also resolved the Sonoma Clean  
21 Power Authority objection and all the joinders to that  
22 objection, Your Honor.

23 THE COURT: Well, is that the same as the -- Mr.  
24 Pascuzzi's California state-agen --

25 MR. SLACK: No, that's different.

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1 THE COURT: That's different. Okay. Sonoma Power --

2 MR. SLACK: So there're still -- and again, I'll go  
3 through this in a second, Your Honor. There're still three  
4 issues, at least that we're aware of: the first is with the  
5 state agencies, who'd like to add some language, which I'll  
6 talk to in a few minutes; the second is, there are individual  
7 fire claimants, they also have a continuing objection; and the  
8 ad hoc subrogation group also has a continuing objection. And  
9 I'll go through each of those.

10 THE COURT: Okay.

11 MR. SLACK: But those are the three that I'm aware of,  
12 Your Honor, that still are outstanding.

13 THE COURT: Okay. Well, you go ahead and summarize it  
14 and then I'll see if there's anyone that you --

15 MR. SLACK: So, Your Honor, I --

16 THE COURT: -- might have forgotten.

17 MR. SLACK: -- what I'd like to do is, because we've  
18 made some progress, and we have made some changes to the  
19 protective order that you entered, I'd like to hand that up and  
20 walk through those with you so you can --

21 THE COURT: Sure.

22 MR. SLACK: -- see what was resolved.

23 THE COURT: Okay. Thank you.

24 MR. SLACK: So, Your Honor, there's a clean and a  
25 blackline. The clean should be the first one. The blackline



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1 is the second. And I'd like to go over the blackline version.

2 THE COURT: Well, you know, you don't need to go  
3 through what's been agreed to. I don't -- I'll rely on it.

4 MR. SLACK: Okay.

5 THE COURT: I think we should identify what's open,  
6 what's unresolved.

7 MR. SLACK: Yeah, well, I -- the only reason I'd like  
8 to at least walk through the NextEra objections -- I think it  
9 relates to one of the unresolved objections --

10 THE COURT: Okay.

11 MR. SLACK: -- because I think a party has an  
12 analogous objection but wasn't satisfied with the resolution.  
13 So --

14 THE COURT: Okay.

15 MR. SLACK: -- I think it's important to at least go  
16 through that, so you understand what our proposal is to deal  
17 with it.

18 So NextEra had raised a few issues, but the principal  
19 objection that we worked out with them related to whether  
20 someone, who was not otherwise permitted to see confidential  
21 and highly confidential information under 7.2 and 7.3, should  
22 be allowed.

23 And after discussions, what we understood the primary  
24 concern was is that while they recognize there's a provision  
25 7.3 already in the protective order that allows for these kinds

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1 of determinations, in other words, a party can come to the  
2 debtors and ask for a consent for somebody -- and that's where  
3 the debtor, of course, is the producing party. It could be  
4 another party. But could come to the debtors and ask for our  
5 consent to show it to somebody who's not otherwise permitted.

6 And the concern was well, maybe the debtor's going to  
7 drag its feet in doing that. So we agreed to a new sentence at  
8 the end of 7.3(k), which is in the blackline. And it  
9 essentially provides that after a request by a party to show it  
10 to somebody, who's not otherwise permitted, the debtor will  
11 have three-to-five days, use best efforts for three days, but  
12 five days to give an answer. And that could be followed by an  
13 application to the Court.

14 THE COURT: Less than three -- at least three but no  
15 later than five.

16 MR. SLACK: Exactly, Your Honor.

17 THE COURT: Sounds like a four to me. Okay.

18 MR. SLACK: So with that change to 7.3(k), NextEra,  
19 and again, as I understand it, all the folks that have joined  
20 that have -- we've resolved those objections.

21 THE COURT: Okay.

22 MR. SLACK: I'll just point out -- I won't walk you  
23 through the provision, but in section 3, we agreed to carve out  
24 a number of the CCAs that we worked out the language with  
25 Sonoma and the joinders. And again, with that language in

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1 section 3, that objection has been resolved.

2 THE COURT: Is that --

3 MR. SLACK: So --

4 THE COURT: Let me take a look at that though. In  
5 section 3 -- I'm looking at the blackline.

6 MR. SLACK: Right, so it's section 3 at pages 4 and 5  
7 of the blackline.

8 THE COURT: Yeah, okay. Oh that's the entities that  
9 are being carved out.

10 MR. SLACK: That's correct, Your Honor.

11 THE COURT: Yeah. All right. Okay, got it.

12 MR. SLACK: So again, I think that leaves only three  
13 of the objections unresolved.

14 THE COURT: But what --

15 MR. SLACK: Our view, Your Honor --

16 THE COURT: What was the fate of the one that was  
17 raised by someone, I forget, about letting outside -- I mean,  
18 sorry, in-house counsel -- those companies that have in-house  
19 counsel were being allowed to see it? Was that resolved or  
20 not?

21 MR. SLACK: I think the only issue that is unresolved  
22 with respect to counsel relates to outside -- at least as we're  
23 aware, now relates to outside counsel who is not counsel in the  
24 bankruptcy. The ad hoc subrogation group would like those  
25 counsel to be able to see information.

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1           And again, our view on that, Your Honor, is that that  
2 already is covered under 7.3(k), which is the catch-all. And  
3 now with the new language, we think that should resolve that  
4 issue.

5           THE COURT: Okay.

6           MR. SLACK: So the three unresolved objections, let me  
7 see if I can go through them. The first, Your Honor, no  
8 particular order -- we'll take the individual fire victim  
9 creditors filed an objection. What they're seeking -- and  
10 we've had some discussions with them, is they essentially want  
11 to see any information that the debtors produced to the TCC.  
12 And putting aside for a moment that this request is overbroad  
13 and inappropriate because the individual fire victims don't  
14 perform the same function in this bankruptcy as the TCC does.  
15 And therefore, the TCC is necessarily going to need information  
16 that wouldn't necessarily be appropriate for other parties.

17           The real issue today is that the request is not a  
18 protective-order issue. The request is simply a request for  
19 documents. They want to see information that the TCC gets, and  
20 if they want to see that, then they can make requests, and  
21 we'll respond to them in the appropriate way. And if they're  
22 not happy with the answers that the debtors give them on a  
23 request-by-request basis, then they can come to court like any  
24 other party who wants information. But it's fundamentally not  
25 a protective-order issue. There isn't a provision in this

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1 protective order that addresses whether parties should be able  
2 to get discovery that they want independently.

3 THE COURT: Well, but if the TCC asks the debtor for  
4 something, and the debtor gives it to the TCC under the  
5 protective-order rules, then doesn't that exactly -- isn't that  
6 what triggers the individual claimants making the same request?

7 MR. SLACK: Yeah, the issue though is, Your Honor,  
8 when -- under the way the protective order works, if you give  
9 information to the TCC there are specific people who they can  
10 give it to.

11 THE COURT: Yeah, I know that. I understand that.

12 MR. SLACK: All right, the question is this is a  
13 separate, essentially, receiving party, meaning if they want  
14 information like any other party in the bankruptcy, they can  
15 make a request. There certainly is nothing that --

16 THE COURT: No, but I know that. I know that, and if  
17 there's no claim of confidentiality, the debtor would be well-  
18 advised to just cooperate with them, right?

19 MR. SLACK: That's true.

20 THE COURT: And if the debtor says no, that's  
21 confidential, or highly confidential, then you're back to well,  
22 okay, then they have to make a request. They don't get to sort  
23 of trigger the three-day, five-day response time? I mean,  
24 what -- in other words, I'm not following you how it gets  
25 implemented from the individual claimant's point of view.

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1 MR. SLACK: So let's say that the individual claimants  
2 are represented. They want information on a particular motion.  
3 They would make a request of the debtor. They would be an  
4 independent receiving party from the TCC, and we'd be able to  
5 judge whether that request makes sense for the individual fire  
6 claimant to see that information.

7 Maybe it's a confidentiality issue, but maybe it's an  
8 issue of should they be performing the same role as the TCC in  
9 duplicating effort in this bankruptcy. Maybe it's an issue  
10 that they don't have a dog in that fight. So it shouldn't be  
11 that everything that the TCC gets that another party should  
12 automatically get. Again, it's just not a protective-order  
13 issue.

14 THE COURT: Well, I know you said that it isn't, but  
15 when does it become one? In other words, if Mr. Julian asks  
16 you for something, and you say well, okay, that's under the --  
17 we'll do it too, but we're marking it confidential, but we'll  
18 give it to you because it's consistent with our term.

19 MR. SLACK: That's right.

20 THE COURT: Then one of the individual claimants says  
21 well, I'd like that same thing too, and you say no, then what?  
22 Then we're back to the same question.

23 MR. SLACK: No, we're actually at a different  
24 question.

25 THE COURT: Okay.

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1 MR. SLACK: And at a different point. And the  
2 different question is you're looking at particular information  
3 that the individual fire claimants want to see.

4 THE COURT: Right.

5 MR. SLACK: I mean, for example, the TCC, because of  
6 their role as a committee, is getting information about the  
7 upcoming CEO motion. And they're getting information about the  
8 KEIP, for example. There's no suggestion that just because the  
9 TCC is getting information to fulfil their role as an official  
10 committee that the fire victims should get everything that the  
11 TCC sees. And that --

12 THE COURT: No, I got that. But what if the fire  
13 claimant says but I want it?

14 MR. SLACK: Right, that's a request to the debtors.

15 THE COURT: Yeah.

16 MR. SLACK: And the debtors will take that just like  
17 they would from any other party.

18 THE COURT: And the debtor says no, I'm not going to  
19 give it to you --

20 MR. SLACK: Right.

21 THE COURT: -- because it's confidential.

22 MR. SLACK: Well, it could be because of that. It  
23 could be for other reasons. But the point, Your Honor, is at  
24 that point you've got a specific request with a specific need.  
25 And both the debtors and the Court are going to be able to look

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1 at the specific need for that specific motion and make a  
2 determination whether the fire victims need that information in  
3 that particular circumstance.

4 And that's the way it should work. It shouldn't work  
5 where you have a blanket everything the TCC gets the fire  
6 victims should get. And that's what they want is this blanket  
7 ruling that they should get everything just because the TCC  
8 gets it.

9 THE COURT: Okay. We'll see what they have to say.

10 MR. SLACK: The second one, Your Honor, that's  
11 outstanding is the -- again, the ad hoc subrogation group. And  
12 they seek to be able to show the debtors' information not just  
13 to their counsel in the bankruptcy, which is permitted. So  
14 anybody who appears in the bankruptcy can get the information  
15 and use it in the bankruptcy. That's not an issue.

16 And we've also agreed, Your Honor, though it doesn't  
17 appear in the -- it doesn't appear in the protective order.  
18 It's essentially a 7.3, but we've agreed that their  
19 bankruptcy -- their bankruptcy counsel who hasn't officially  
20 appeared, but they've given us a list. And they've said these  
21 are our bankruptcy counsel for the individual members. We've  
22 also agreed that they can see the information.

23 And so now the question that remains is whether their  
24 essentially outside litigation subrogation counsel should be  
25 able to have a blanket waiver here. And again, what our view



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1 is, Your Honor, is that 7.3 covers this. And if you think  
2 about it, Your Honor, this is really an analogous issue to what  
3 NextEra and the joinders there had. They wanted to show it to  
4 common interest folks. They're not -- common interest folks  
5 aren't listed. And we worked out an arrangement under 7.3. I  
6 think there was a recognition that the protective order already  
7 covered these kinds of disputes. And the language in (k) that  
8 we've added makes sure that it happens promptly.

9 THE COURT: Well so would that -- in your mind, that  
10 would work for the subrogation group too?

11 MR. SLACK: That's exactly right. And the advantage  
12 to that, Your Honor, and it's an important one, is that that  
13 allows the debtor to look on a case-by-case basis.

14 THE COURT: Right.

15 MR. SLACK: With respect to the documents.

16 THE COURT: So if a member of the ad hoc subrogation  
17 group says share this information with our general counsel, our  
18 outside litigation counsel, not bankruptcy --

19 MR. SLACK: That's right.

20 THE COURT: -- that triggers the three-to-five-day  
21 response by you.

22 MR. SLACK: Exactly, Your Honor, exactly.

23 THE COURT: But it still means that you're the one,  
24 the debtor and you as its counsel are the ones that have to  
25 respond. And if you respond favorably, the problem's solved.

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1 If you say no, then --

2 MR. SLACK: Exactly, Your Honor.

3 THE COURT: -- I'm here. Okay.

4 MR. SLACK: The last outstanding objection is by the  
5 state agencies. Now, first we've agreed to carve them out.

6 THE COURT: Right.

7 MR. SLACK: And they wanted to be carved out. So  
8 they're not carved out, and that's in the section 3 carve-out.

9 THE COURT: We said that.

10 MR. SLACK: But that didn't resolve their objection.  
11 What they're -- what they said is they want to put in place a  
12 provision. And I don't think their language is in -- is in  
13 their objection, but they want to put in place a provision that  
14 would allow anybody who receives the debtor's information to  
15 essentially be a quasi-attorney general whistleblower and have  
16 a global carve-out that says, whether something's confidential  
17 or highly confidential, that they can essentially whistle blow  
18 and tell the state agencies.

19 THE COURT: So you're saying -- you know, I did look  
20 at the state agencies specifically because I was aware that  
21 they were carved out. But I looked at it and so this -- what  
22 you call the whistleblower rule is not even in there.

23 MR. SLACK: I think they mentioned that they -- I  
24 think they have one sentence where they complain about the fact  
25 that people can't do it, but they don't propose language, and

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1 there's no discussion or rationale in the papers, Your Honor.

2 THE COURT: But is this a protective-order issue? In  
3 other words, if the state agencies are not covered by this  
4 rule, and they get some information, then if there's a  
5 whistleblower consequence there's a consequence. The rule  
6 doesn't apply, so what is there to --

7 MR. SLACK: Yeah --

8 THE COURT: How do we come up with a carve-out to the  
9 carve-out?

10 MR. SLACK: Yeah, Your Honor, I think you're on to  
11 something, but I think look, this is -- there are statutes that  
12 deal with whistleblowers.

13 THE COURT: I would think --

14 MR. SLACK: And that's a legislative province. And  
15 that's why you're going to find any support -- there's no  
16 support for this kind of a provision because this is the  
17 province of the legislature. And if the legislature wants to  
18 have a carve-out for all protective orders in civil litigation  
19 that would allow folks who are regulated to have people who get  
20 information essentially become quasi attorney generals, the  
21 legislature can enact that. There's no preventing it.

22 THE COURT: But we're not going to tell the  
23 legislature what to do. The question is what should the  
24 Bankruptcy Court do. And what would -- I see Mr. Pascuzzi's  
25 going to tell me what he wants to do, but what would you have

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1 me do, Mr. Slack? Would you just leave it as is?

2 MR. SLACK: I don't think there needs to be any change  
3 at all --

4 THE COURT: No change at all.

5 MR. SLACK: -- to the protective order.

6 THE COURT: Okay.

7 MR. SLACK: I think that the protective order works  
8 the way it is. I mean, two points that are really important  
9 here. One, the debtors have cooperated fully with the  
10 regulators, provided information. There's no suggestion  
11 otherwise, so I think that's -- we've got to put that aside.

12 And the debtors will continue to do that. And the  
13 state regulators are in the same position, if this is silent,  
14 that they would be without a protective order.

15 THE COURT: Well, but that's what strikes me is it's  
16 as though that -- Mr. Pascuzzi will tell me in a minute what's  
17 bothering him, but based upon paragraph 3, it's as though  
18 they're simply not party to the protective order. Therefore,  
19 if they want some information, they're governed by the  
20 traditional rules and so are you.

21 MR. SLACK: Yeah, that's right, Your Honor. Anyhow,  
22 so, Your Honor, I think again somebody may stand up and say I  
23 missed one, but I think those are the three objections that are  
24 outstanding.

25 THE COURT: Okay. Because Mr. Pascuzzi was almost at

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1 the podium, we'll go in reverse order. I'll ask him to speak,  
2 and then I'll hear from whoever's speaking for the ad hoc  
3 subrogation group. And then we'll come back and finish with  
4 the fire claimants.

5 Mr. Pascuzzi, what do you want me to do for you?

6 MR. PASCUZZI: Thank you, Your Honor. Paul Pascuzzi,  
7 Felderstein Fitzgerald Willoughby & Pascuzzi, co-counsel with  
8 the Attorney General's Office for the state agencies listed in  
9 our pleadings at docket 2631 and 2634.

10 THE COURT: Right, got them.

11 MR. PASCUZZI: Your Honor, we appreciate the carve-  
12 out. Let me tie back in though why this is important. The  
13 provision in section 7.1, which is the scope of -- or the  
14 access and use of discovery material, it prohibits use by a  
15 receiving party of any of the discovery material for any  
16 purpose other than the Chapter 11 cases.

17 So this order is going to apply to 50,000-plus  
18 creditors in this case. We're not talking about a discrete  
19 order, typical in a litigation or a bankruptcy case that  
20 applies to a committee and a debtor. So under this hugely  
21 broad order, parties are going to be getting information from  
22 the debtor during the case. And if they happened --

23 THE COURT: Excuse me, they're going to be getting it  
24 in response to their request for it.

25 MR. PASCUZZI: Correct.

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1 THE COURT: I mean, the debtor just isn't now putting  
2 out a Facebook page of all this information.

3 MR. PASCUZZI: Understood. Understood.

4 THE COURT: So if an individual creditor or person or  
5 entity asks the debtor for something, the debtor will either  
6 provide it or refuse to.

7 MR. PASCUZZI: Correct. Correct.

8 THE COURT: Okay.

9 MR. PASCUZZI: You're following exactly.

10 THE COURT: Okay, so I'm not sure what -- go ahead  
11 with your point.

12 MR. PASCUZZI: So this creditor gets information in  
13 response to a request. And let's say it's information that the  
14 creditor says well, this could reveal a violation of a law or  
15 regulation, an environmental issue, something like that. And I  
16 believe I need to report it to a state agency or law  
17 enforcement. This order, under penalty of sanctions in section  
18 13.8 says any violation of this order is subject to sanctions  
19 from this Court. This order could chill and/or does prevent  
20 that creditor from disclosing information. I'm not talking  
21 about disclosing confidential information. We're not even  
22 talking about disclosing the discovery materials. I'm talking  
23 about picking up the phone and making a phone call to the  
24 appropriate regulatory authority.

25 THE COURT: Well but I think what you're telling me is

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1 that you are not making the argument today for the agencies.  
2 You're making it for everybody else in the world.

3 MR. PASCUZZI: The agencies regulate the debtor, Your  
4 Honor.

5 THE COURT: No, I know that.

6 MR. PASCUZZI: So we want --

7 THE COURT: I mean, I'm not making light of it. I'm  
8 just trying to figure out why you're complaining about  
9 something that's an agreement that you're not covered by.

10 MR. PASCUZZI: Because --

11 THE COURT: And the answer is because other people are  
12 covered by it.

13 MR. PASCUZZI: Because it would chill --

14 THE COURT: Yes.

15 MR. PASCUZZI: -- other people reporting to our  
16 clients issues that might show up in the discovery material.

17 THE COURT: But what if an individual learns something  
18 independent of this Court's protective order? That person's  
19 certainly free to blow the whistle, right?

20 MR. PASCUZZI: Yeah.

21 THE COURT: That's what whistleblower laws provide.

22 MR. PASCUZZI: The protective order does not prevent  
23 that, but the protective order does prevent any use of any  
24 discovery materials other than in the Chapter 11 case.

25 THE COURT: But isn't -- am I correct; though it

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1 operates because someone has made the request per the order.

2 MR. PASCUZZI: Right.

3 THE COURT: And the debtor has responded per the  
4 order.

5 MR. PASCUZZI: Right.

6 THE COURT: And so if an individual, not you  
7 representing the agency -- someone else, a citizen of the state  
8 makes a request, and PG&E says okay, we'll give it to you, but  
9 you can't use it for anything. That person can seek relief  
10 from the Court or what?

11 MR. PASCUZZI: That person could seek relief from the  
12 Court. But, Your Honor, that's not how investigations and  
13 regulatory --

14 THE COURT: No, I know that.

15 MR. PASCUZZI: -- violations work --

16 THE COURT: You don't have to go to the --

17 MR. PASCUZZI: -- where you go --

18 THE COURT: -- bankruptcy court to get permission to  
19 blow the whistle.

20 MR. PASCUZZI: Or you don't go tell the target of the  
21 investigation that you're going to go report something to a law  
22 enforcement agency.

23 Your Honor, under the circumstances of this case,  
24 where PG&E is on probation and is subject to numerous PUC  
25 proceedings, I mean, the regulatory authority and the whole



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1 umbrella over this case makes this a serious issue.

2 THE COURT: Yeah, I know.

3 MR. PASCUZZI: In addition, the fact that the order  
4 covers everybody --

5 THE COURT: So --

6 MR. PASCUZZI: -- everybody --

7 THE COURT: -- so what would you do to -- is it  
8 paragraph 14?

9 MR. PASCUZZI: So we wanted to add one sentence.

10 THE COURT: To what paragraph?

11 MR. PASCUZZI: It could be a standalone paragraph, or  
12 it could be in a "provided however" in 7.1.

13 THE COURT: Okay, let me hear it -- what it says.

14 MR. PASCUZZI: It shall not be a violation of this  
15 protective order for any receiving party to notify,  
16 confidentially, law enforcement or regulatory personnel of a  
17 governmental unit of any potential violation of law revealed by  
18 the discovery materials.

19 I can hand the sheet up, if you want to look --

20 THE COURT: So the guy who gets the information from  
21 Mr. Slack can't put it on his Facebook page.

22 MR. PASCUZZI: No.

23 THE COURT: But he can call up the Attorney General's  
24 Office of the Department of whatever.

25 MR. PASCUZZI: Exactly. Exactly, Your Honor. We're

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1 not talking about disclosing confidential materials. We're not  
2 talking about even disclosing the discovery materials itself.  
3 But if they learn something from the discovery materials, they  
4 should have the ability, without being subject to the risk of  
5 sanctions from this Court, to report it to law enforcement or  
6 regulatory personnel.

7 THE COURT: Okay. The two critical -- law enforcement  
8 or regulatory --

9 MR. PASCUZZI: Personnel of a governmental unit. And  
10 I can hand up a piece of paper --

11 THE COURT: No, that's okay.

12 MR. PASCUZZI: Okay. And I've given this to debtors'  
13 counsel. And the tort committee counsel is fine with it too,  
14 when we were dealing with them with their order.

15 THE COURT: Mr. Slack, why can't I -- how can I not --  
16 I mean, how can this Court sort of tell somebody if you get  
17 some information from the debtor, you cannot tell it to a law  
18 enforcement person?

19 I mean, that doesn't play well on the front page of  
20 The New York Times either, right?

21 MR. SLACK: Well, I don't think --

22 THE COURT: Because you're going to --

23 MR. SLACK: -- that's -- I don't think that's the  
24 issue, Your Honor.

25 THE COURT: But the debtor's in control of the

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1 information. If the person asks the information and you don't  
2 want to give it to them, you don't give it to them. But if you  
3 give it to them, and then he calls up law enforcement, it's  
4 hard for me to think that that's okay -- so I mean, that I  
5 should prohibit that. But make it -- I mean, Mr. Pascuzzi has  
6 zeroed it in, and he's -- I think he's doing it for the benefit  
7 of every other citizen of the country who might get  
8 information.

9 So and it seems to be narrow, how he wants it. So  
10 what am I missing?

11 MR. SLACK: So I think what you're missing, Your  
12 Honor, is that what it's essentially asking -- and if you look  
13 at the language where an individual who's getting information  
14 on -- that they've asked for from the debtor in the  
15 bankruptcy --

16 THE COURT: Um-hum.

17 MR. SLACK: -- is now going to individually assess  
18 whether there's a potential violation of law. And based on  
19 their view, they're now going to be able to disclose  
20 confidential and highly confidential information.

21 And what I would suggest, Your Honor, is that there's  
22 a reason that you don't see this provision anywhere -- and  
23 there's not a -- and they're not even trying to tell you  
24 there's any support for this provision. It's effectively, Your  
25 Honor, a legislative issue that Your Honor would be intruding

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1 on.

2 In other words, there are rules about whistleblowers.  
3 And the legislature can say whistleblowers can get information  
4 and whistle-blow, and they're protected. Okay? But this is  
5 essentially a legislative act. And to say that this is somehow  
6 unique, the fact is is that every bankruptcy has protective  
7 orders.

8 THE COURT: Well, not every --

9 MR. SLACK: And every bankruptcy --

10 THE COURT: -- bankruptcy has a protective order, but  
11 this one has one. So, okay.

12 MR. SLACK: Okay, but the -- certainly I can tell Your  
13 Honor that there are numerous bankruptcies that have protective  
14 orders --

15 THE COURT: I know.

16 MR. SLACK: -- that relate to --

17 THE COURT: And I --

18 MR. SLACK: -- a lot of creditors. And they're --

19 THE COURT: -- and I've issued some of them.

20 MR. SLACK: And there are other regulate -- there are  
21 other companies that are heavily regulated. There's securities  
22 issues for companies. There's a lot of companies that have had  
23 other issues. And the fact is that there's not a single shred  
24 of support for this kind of provision being entered by a court  
25 and really invading the legislative space.

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1           THE COURT: I guess I'm having trouble understanding  
2 why you say that. So again, I do well with hypotheticals. So  
3 Mr. X -- not Mr. Pascuzzi -- Mr. X, who has standing to make a  
4 request, he's a creditor -- Mr. X contacts you under the rules  
5 and says I'd like to see the report that you got from CAL FIRE  
6 last month about something. And you make a decision to release  
7 it or not. And if you release it, you're telling me it's a  
8 legislative act that I can't tell Mr. X that he can't take that  
9 information to a law enforcement or regulatory entity. And I  
10 don't know why that is so horrible. But you're just saying  
11 well, it's a legislative act.

12           I don't know -- I don't understand why that's so,  
13 because it seems to me you control the disposition to begin  
14 with. So if this person says give me the such-and-such, and  
15 you think, gee, I don't want that getting out, you don't  
16 release it. And then he has to come to court, or you --  
17 whatever the rules are -- then a court determines whether it  
18 should be released.

19           But --

20           MR. SLACK: No, I'm not following that, Your Honor --

21           THE COURT: Okay, well --

22           MR. SLACK: -- in the sense that if somebody comes to  
23 us and they want information in the bankruptcy, the debtor is  
24 not deciding do we want information to go to the government.

25           THE COURT: No, no.

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1 MR. SLACK: As I said --

2 THE COURT: You decide not to release it to the  
3 requester.

4 MR. SLACK: Right. But my point is, there may be a  
5 completely legitimate reason to release it to the objector or  
6 whomever in the bankruptcy is looking for it. And the point  
7 is, it shouldn't be up to that person to then make a  
8 determination whether they think, based on this maybe limited  
9 information, there's a potential violation of law.

10 THE COURT: But who's it up -- who's it up to? Who  
11 makes the call? I don't know the answer. Who makes the call?

12 MR. SLACK: Well, so the way this works -- so in the  
13 absence of -- in the absence, Your Honor, of any provision  
14 here -- first off, the government is in no worse shape before  
15 or after a protective order is put in place. Again, these are  
16 very common. And the fact is, what we're saying is if you  
17 get information in the bankruptcy, you should use it for the  
18 bankruptcy. And if there are issues that the government, the  
19 State agencies, want to have in regulation, there's mechanisms  
20 to get that information.

21 And if the legislature wants to say that in civil  
22 litigation, a person getting information -- because there are  
23 whistleblower statutes -- can use that regardless, that's a  
24 legislative province to say. But if you get information in a  
25 bankruptcy, Your Honor, then by doing that, it's very, very

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1 common -- I think probably in all of your protective orders  
2 that this Court's done, I would gather, it says that you can  
3 use that information in the bankruptcy.

4 THE COURT: Well, I don't remember. You can do your  
5 homework. I'm focusing on this one. And I'm still having  
6 trouble with the basic proposition -- I'm sorry to be dense  
7 about this -- is that you control the outflow of information,  
8 but you don't want the recipient of that information to do this  
9 narrow thing.

10 It seems to me, the simple answer is if the  
11 information is -- passes your screening, such that you're  
12 willing to release it to somebody, then you ought to be willing  
13 to let it go find its way, not to Facebook or to the guys -- to  
14 a competitor, but to a law enforcement or regulatory person.  
15 They will decide to disregard it or to act on it. That's their  
16 job.

17 So I don't have -- you can quote every protective  
18 order I've ever signed or every bankruptcy judge has ever  
19 signed in the country. I still don't know what the problem --  
20 how we -- why it's wrong to do what Mr. Pascuzzi is arguing and  
21 asking for.

22 MR. SLACK: So, Your Honor, I have --

23 THE COURT: So you've got to explain -- you've got to  
24 convince --

25 MR. SLACK: -- I think the idea is just simply that

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1 you're giving the power to people who are getting this in the  
2 bankruptcy to make individual determinations on incomplete  
3 information that they think there's a potential violation of  
4 law, and that's --

5 THE COURT: Mr. Slack --

6 MR. SLACK: -- that's inappropriate.

7 THE COURT: -- somebody sitting in the back of the  
8 room could have this morning called the Attorney General of the  
9 United States to say the bankruptcy judge just allowed fifty  
10 million dollars to go out to the D&Os. That's an outrage. Put  
11 them all in jail.

12 And somebody in the Attorney General's Office will  
13 decide to disregard it or to act on it. What is different?  
14 What is different if someone gets information in the context of  
15 a bankruptcy proceeding and shares that with this narrow band  
16 of people who will either act on it, or more typically, if it's  
17 of no big deal, will ignore it? What is the harm?

18 I mean, I'm not -- you're not telling me where it  
19 hurts. You're only telling me that we've done it in other  
20 cases. But this is not the other case. So --

21 MR. SLACK: Well, I'm not talking about that, Your  
22 Honor.

23 THE COURT: Okay.

24 MR. SLACK: It just creates -- it creates mischief in  
25 the following -- in the following -- I'm going to -- I'm going



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1 to explain it, Your Honor, right? Because what you have is  
2 you've now empowered people who are getting information, who  
3 may have an ax to grind with the debtor --

4 THE COURT: Well, then don't give them the  
5 information.

6 MR. SLACK: Well, but there's two --

7 THE COURT: If I --

8 MR. SLACK: -- separate issues, Your Honor.

9 THE COURT: -- if somebody who is a troublemaker, who  
10 is always throwing stones at PG&E and arguing about everything,  
11 don't volunteer the information. Make them come and convince  
12 me to order you to produce it. And then, if I order you to  
13 produce it, convince me that I should restrict the use of it.

14 But you're sort of saying okay, public, if you get  
15 information under this procedure, you can't use it even for  
16 what appears to be a lawful practice.

17 MR. SLACK: Well, so you're --

18 THE COURT: Not a spiteful one or a vindictive one.

19 MR. SLACK: -- you're creating a back door in the  
20 following respect, Your Honor. The State agencies have asked  
21 to be carved out of this. And it truly can't be that  
22 individuals can essentially get out of the confidentiality --  
23 again, people who get information can get out of the  
24 confidentiality by saying well, I think there may be a  
25 potential violation, so I'm going to --

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1 THE COURT: I guess you're just not --

2 MR. SLACK: -- I'm going to send it to the --

3 THE COURT: -- you're not agreeing with what I'm  
4 saying. They don't get the confidential stuff if you don't  
5 give it to them. You're the one who gives it to them.

6 MR. SLACK: Right, but let's assume --

7 THE COURT: Look, I can't --

8 MR. SLACK: -- Your Honor, that --

9 THE COURT: -- I can't make an informed decision  
10 without some more help. So if this is an issue that needs to  
11 be resolved, I need to have a little bit of further briefing on  
12 this narrow issue from both sides. I mean, I just can't do  
13 this --

14 MR. SLACK: Okay, Your Honor.

15 THE COURT: -- on the fly, because every time I tell  
16 you what bothers me, you tell why it shouldn't bother me. And  
17 that's not good enough.

18 I'm not saying you're wrong. I'm saying I just  
19 can't -- I can't see the problem when you control the outflow  
20 and you say well, somebody's going to misuse it. Well, then  
21 don't produce it.

22 So let me do this. I will -- my tentative thinking is  
23 to go with Mr. Pascuzzi's language, but I will give you an  
24 opportunity -- you tell me when we end today a time, and I  
25 won't do anything until -- on that narrow issue until you have

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1 a chance to brief it briefly.

2 MR. SLACK: Okay, that's fine, Your Honor.

3 THE COURT: Okay? Fair enough?

4 MR. SLACK: So --

5 THE COURT: Or maybe you'll just -- maybe you and Mr.  
6 Pascuzzi can come up with something else in between. I don't  
7 say you're wrong. I just don't know one way or the other.

8 So let's go to -- so that's an open issue for the  
9 short term.

10 Anybody want to be heard from the ad hoc subrogation  
11 group about sharing the information? Who's speaking on that?  
12 Yes.

13 MR. MCCALLEN: Yes, Your Honor. Good morning.  
14 Benjamin McCallen from Willkie Farr & Gallagher, on behalf of  
15 the ad hoc subrogation group.

16 Your Honor, Mr. Slack was correct. We had filed an  
17 objection previously. And most of the issues in our objection,  
18 I think, have been resolved. But there is one open issue, and  
19 that's really the debtors have taken a position as to the fact  
20 that they think certain of the lawyers who represent my clients  
21 can see documents produced pursuant to the protective order and  
22 certain can't.

23 And let me describe where the lines are being drawn  
24 here. So my firm, Your Honor, represents the ad hoc group as a  
25 group. But that group consists of more than a hundred

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1 individual entities, all of whom --

2 THE COURT: Right.

3 MR. MCCALLEN: -- hold subrogation claims.

4 THE COURT: And they're all insurers -- generally  
5 insurers, right, who paid the claims?

6 MR. MCCALLEN: Generally speaking, that's correct,  
7 Your Honor.

8 THE COURT: Yeah.

9 MR. MCCALLEN: And so each of those members of my  
10 group have -- I wouldn't say each, but I think the majority, at  
11 the very least, have individual counsel of their own that fall  
12 into a couple different categories.

13 Some of them have retained separate bankruptcy  
14 counsel. And as Mr. Slack explained earlier today, and it's my  
15 understanding as well, the debtors say that's fine; those  
16 bankruptcy lawyers can see the materials produced pursuant to  
17 the protective order as well.

18 But my clients also have what I'm going to call today  
19 subrogation counsel, who are --

20 THE COURT: Just non-bankruptcy lawyers. The rest of  
21 them --

22 MR. MCCALLEN: Everybody else.

23 THE COURT: -- the unwashed.

24 MR. MCCALLEN: There's bankruptcy lawyers, and then  
25 everybody's --

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1 THE COURT: The people that don't count, right?

2 MR. MCCALLEN: By subrogation lawyers, what I mean are  
3 generally speaking lawyers who --

4 THE COURT: Yeah, no, I --

5 MR. MCCALLEN: -- have had experience litigating  
6 subrogation claims.

7 THE COURT: No, I understand.

8 MR. MCCALLEN: And many of these -- just context, Your  
9 Honor, many of these lawyers -- and there's about twenty  
10 different law firms who represent many of the different members  
11 of my group, they were participating in the state court  
12 proceeding relating to the wildfire claims of --

13 THE COURT: Yeah, no, I understand --

14 MR. MCCALLEN: -- 2017 and 2018 --

15 THE COURT: -- I understand.

16 MR. MCCALLEN: -- before that was stayed.

17 THE COURT: There are large numbers of them out there.  
18 I'm aware of that.

19 MR. MCCALLEN: Of course. And so, Your Honor, what it  
20 really comes down to, the provision in the protective order  
21 that's been agreed to by the TCC, the UCC, and the debtors, has  
22 a definition of "outside counsel" as to who can see the  
23 materials. And what the definition says is outside counsel is  
24 defined as "attorneys who are not employees of a party but are  
25 retained to represent or advise a party regarding the Chapter

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1 11 cases."

2 It's our position that the subrogation counsel are  
3 advising our clients within the context of these Chapter 11  
4 cases, for one simple reason, which is that we're only here for  
5 one reason, obviously. These cases are about our subrogation  
6 claims.

7 And so the material that's going to be produced in  
8 these cases is going to inform our clients in many different  
9 ways about the value of those claims. And it could come up in  
10 many different contexts, whether it be plan negotiations,  
11 whether it be litigation related to issues that in any way  
12 affect the value of those claims.

13 My clients should have the right to be able to say to  
14 their counsel who's experienced in litigating these claims and  
15 in valuing these claims, we've just got this document from the  
16 debtor. Take a look at this and let us know what you think  
17 about this issue. And I'll say, Your Honor, just as context, I  
18 speak with these lawyers all the time. They're very involved  
19 in advising the clients with respect to these Chapter 11 cases.

20 Now, the debtors have said --

21 THE COURT: Excuse me. Where's the language that --  
22 is it in 7.2?

23 MR. MCCALLEN: So the definition of outside counsel,  
24 Your Honor, is --

25 THE COURT: Or Mr. Slack, if you know where it is --

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1 MR. MCCALLEN: I believe it's at the front of the  
2 protective order where the defined terms are.

3 THE COURT: Okay. Oh, all right, yeah, it probably  
4 is.

5 Counsel without qualifier -- house counsel, outside  
6 counsel. 2.6, is that it?

7 MR. MCCALLEN: Yes, Your Honor.

8 THE COURT: Okay. All right. So what would you have  
9 that 2.6 say?

10 MR. MCCALLEN: Well, I think as it's written, Your  
11 Honor, and what -- and just as context here, the reason that  
12 this dispute came about is we called the debtors up, because  
13 when it comes to issues like protective orders, I want to make  
14 sure there's no ambiguity or disagreement. We basically called  
15 them up and said look, we have these lawyers who have not,  
16 technically speaking, put in a notice of appearance in these  
17 cases. They'll sign the acknowledgement and agree to be bound  
18 by the terms of the protective order. We just want to make  
19 sure that we're in agreement here that these lawyers can see  
20 documents produced pursuant to the protective order, under this  
21 definition.

22 And they said no. They said, in effect, Willkie Farr  
23 & Gallagher, you are the lawyers this is talking about. We'll  
24 make a carve-out for the other people who happen to be  
25 bankruptcy lawyers at other law firms, but if you're a

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1 subrogation lawyer, it doesn't count.

2 THE COURT: Well, but the language says attorneys who  
3 advise the party regarding the Chapter 11 case.

4 MR. MCCALLEN: Um-hum.

5 THE COURT: And that's pretty broad in and of itself.

6 MR. MCCALLEN: I agree, Your Honor. And that's why I  
7 think that these lawyers who are what I'm calling subrogation  
8 counsel, fit within that definition on the terms of the  
9 protective order as agreed to among the parties.

10 THE COURT: Well, but then, if I didn't do anything,  
11 then the first time Mr. Slack took issue with how you shared  
12 with somebody would be a test of that language, and we'd have  
13 to test it on a real case, not a hypothetical one.

14 I mean, I guess what I'm saying -- I thought maybe it  
15 was going to say people that are member of the American  
16 Bankruptcy Institute or something like that. I mean,  
17 bankruptcy lawyers like to think they're the only ones that  
18 know the specialty, but there are a lot of other people that  
19 know it too, and they wouldn't call themselves bankruptcy  
20 lawyers.

21 MR. MCCALLEN: Of course, Your Honor. And --

22 THE COURT: Yeah.

23 MR. MCCALLEN: -- look, you're absolutely right;  
24 that's a way we could have proceeded. But when it comes to  
25 court orders regarding discovery and documents and sharing it,



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1 I don't like to take the position that I think makes sense and  
2 let the debtors say oh, you violated a protective order and  
3 then we come in and have a hearing about --

4 THE COURT: And I don't want you to.

5 MR. MCCALLEN: -- interpreting that.

6 THE COURT: Obviously from a judge's point of view,  
7 the one thing we want these orders to do is to work, not to be  
8 things to fight about.

9 MR. MCCALLEN: Of course, Your Honor.

10 THE COURT: But again, is there specific words that  
11 you would add to 2.6 to clarify it?

12 MR. MCCALLEN: I --

13 THE COURT: Or somewhere else?

14 MR. MCCALLEN: Well, Your Honor, I think that there's  
15 a couple different ways that you could deal with this. I guess  
16 one would be just to simply rule today that parties who sign --  
17 counsel for the parties who sign the acknowledgement and agree  
18 to be bound to the terms of the protective order are outside  
19 counsel under 2.6.

20 Another way of dealing with the same -- with the same  
21 issue is the protective order has a provision where other  
22 lawyers can get documents by signing the acknowledgement that  
23 appears at the end. But the acknowledgement says that the  
24 debtors have to give consent or the producing party has to give  
25 consent for that party to get the information. So if the

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1 consent language were stricken, again, a party could sign --  
2 could sign the protective order.

3 And I guess the third way of dealing with it, Your  
4 Honor, because there's really a lot of ways to address this  
5 issue, is in the language of 2.6, we could put in something  
6 specific with respect to the ad hoc subrogation committee, that  
7 that includes parties retained to represent them in connection  
8 with stayed litigation related to their subrogation claims.

9 THE COURT: Well, Mr. Slack, you need to tell me what  
10 you can live with. I mean, it doesn't sound unreasonable --  
11 and I don't want to try and define the bankruptcy attorney. I  
12 mean, if there were no Chapter 11 case, we wouldn't have this  
13 meeting -- we wouldn't be here. So what language can you live  
14 with, given Mr. McCallen's request to have some inclusion here?

15 MR. SLACK: Your Honor, the language that's here --  
16 and I think the intention is pretty clear -- if somebody  
17 appears in the bankruptcy case -- and we don't control that;  
18 they can have bankruptcy counsel, somebody who appears in the  
19 bankruptcy, and get the information.

20 So I think that the language the way it -- the way it  
21 reads and the way it's intended, covers that. And then anybody  
22 outside of that, Your Honor, should be able to still make  
23 requests of the debtor under 7.3.

24 THE COURT: But 2.6 doesn't say "retained". It says  
25 "advise a party regarding the case".

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1 MR. SLACK: With respect to -- right, with respect to  
2 the bankruptcy.

3 THE COURT: Well, it does -- no, it doesn't say that.  
4 It says "regarding the case". So --

5 MR. SLACK: Okay.

6 THE COURT: So --

7 MR. SLACK: So regarding the Chapter 11 cases. But  
8 the idea is still, Your Honor, if somebody is going to be  
9 retained to advise with respect to the Chapter 11 cases, this  
10 language, again, allows people to see it.

11 The question is let's say you have counsel that is  
12 separate litigation counsel. You would want that counsel to  
13 make a specific request to the debtor under 7.3. And that was  
14 the intention of that.

15 And, Your Honor, I mean, I think you can see that the  
16 intention -- because if you read the next sentence with respect  
17 to the official committees, where the official committees have  
18 agreed, the whole idea here is that outside counsel should be  
19 defined as those people appearing and giving advice with  
20 respect to the bankruptcy.

21 THE COURT: But isn't it, by definition, if you are  
22 representing a subrogation claimant, it is in respect to the  
23 bankruptcy? Because the reason why you have a subrogation  
24 creditor is because someone has paid the victim and therefore,  
25 essentially, to use the old term, steps in the shoes of the

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1 victim. So that -- for purposes of the property damage.

2 So they've essentially -- I mean, why else would they  
3 be advising them except in connection with the case. That's  
4 why they're here.

5 MR. SLACK: Right.

6 THE COURT: They wouldn't be here, or they wouldn't  
7 even be coming to use our bankruptcy court protective regime,  
8 unless they have an interest in the outcome of the bankruptcy.  
9 So --

10 MR. SLACK: The question --

11 THE COURT: I mean, look, so for example, there is a  
12 motion to go forward with the Tubbs fire. What if that motion  
13 is granted? Then do lawyers like subrogation counsel have a  
14 right to get information under 2.6, if the Court grants relief  
15 from stay, so the litigation is going forward in state court?

16 I mean, I realize that that's for another day, and I'm  
17 not predisposing this. But I'm saying, what are the rules  
18 then?

19 MR. SLACK: Right. So the interim -- but I think you  
20 hit it on the nose, Your Honor, is that in specific situations,  
21 the debtor's going to get these requests and is going to  
22 respond to those requests knowing the type of information and  
23 what it is. And that's why 7.3 is in there.

24 So I think you -- I think, Your Honor, you actually  
25 hit it on the nose, is that in specific circumstances, there

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1 can be requests of the debtor. And the question is whether  
2 there should be a blanket you-can-see-everything versus making  
3 the requests on a case-by-case basis under 7.3.

4 THE COURT: Okay. So what -- again, you've told me  
5 that 7.3 was modified with (k). Where would I --

6 MR. SLACK: That's --

7 THE COURT: -- go for 7.3 to pick up --

8 MR. SLACK: Right. So it's 7.3(k), Your Honor.

9 THE COURT: Yeah, no, I'm there. Okay.

10 So let's say, Mr. McCallen -- am I pronouncing your  
11 name correctly, [Mc-alin]?

12 MR. MCCALLEN: Yes. Yes, Your Honor.

13 THE COURT: All right. So if his co-counsel who is  
14 not his -- has never appeared in the bankruptcy court but is  
15 advising his -- their common client about --

16 MR. SLACK: Right.

17 THE COURT: -- what does this all mean, how would that  
18 person -- how would that person request information through  
19 you?

20 MR. SLACK: Right. So the person would request  
21 information and therefore become a receiving party. And the  
22 request would go in to the debtor, Your Honor, that would say  
23 you know what, with this -- with this issue -- I don't want to  
24 say what issue -- but with this issue, it's really necessary  
25 that we talk to our subrogation counsel.

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1 THE COURT: Um-hum. Right.

2 MR. SLACK: And the debtors would then have a  
3 period -- a very short period to be able to say yes or no. And  
4 then that issue could come to the Court when it's ripe, when we  
5 know what information they want to see and be able to assess  
6 it.

7 MR. MCCALLEN: Your Honor, can I address that for a  
8 second?

9 THE COURT: Yeah, I'm trying to figure out --

10 MR. MCCALLEN: So I --

11 THE COURT: -- how to make it work.

12 MR. MCCALLEN: -- Mr. Slack makes, in the abstract,  
13 some interesting arguments about how this could play out. But  
14 as a practical matter, where's what we're talking about here.

15 My clients -- this isn't a situation where we're  
16 talking about we've got FERC lawyers who might come in for some  
17 special issue on something and come into the case and out. And  
18 I can understand why they wouldn't get everything. We have  
19 subrogation claims. These are the lawyers who best understand  
20 those claims.

21 THE COURT: And they are --

22 MR. MCCALLEN: That's what this case is about.

23 THE COURT: -- the people who have advised your client  
24 that you have to pay the losses of victim X, and therefore you  
25 are in X's shoes for -- vis-a-vs PG&E.

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1 MR. MCCALLEN: Absolutely, Your Honor. And as a  
2 practical matter, what we're talking about here is I've got  
3 over a hundred clients, dozens of their counsel who work hand-  
4 in-glove with them. So this -- what Mr. Slack is proposing and  
5 what the debtors are proposing is when we get a document  
6 production from the debtors, and I find something in there that  
7 I say I want to -- that I want to send to the subrogation  
8 lawyers, I've got to go back to him and I've got to say either  
9 this production or this list of documents, I want to show to  
10 these lawyers. And then I have to have a conversation with him  
11 about why that is and explain what it is I'm trying to do, and  
12 then maybe he says yes to ten of the documents and no to five.  
13 And I need to keep to track of that.

14 THE COURT: Mr. McCallen, does this get solved if I  
15 let you interlineate 2.6 to include subrogation counsel working  
16 with bankruptcy counsel, or something of that nature?

17 MR. MCCALLEN: From my perspective --

18 THE COURT: Language like that?

19 MR. MCCALLEN: -- from my perspective, yes, Your  
20 Honor.

21 THE COURT: I mean, just that kind of phrase.

22 So if Mr. Slack is asked to produce something and you  
23 send it over to FERC's general counsel, you've violated the  
24 rule. But if you send it over to Attorney Smith, who you've  
25 been working with since the fire, to advise your co -- the two

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1 of you, your common client about the subrogation claims and the  
2 assertion of claims in the PG&E case --

3 MR. MCCALLEN: Um-hum.

4 THE COURT: -- that --

5 MR. MCCALLEN: Yeah, of course, Your Honor.

6 THE COURT: -- goes with the territory.

7 MR. MCCALLEN: And we're not trying to hide these  
8 people. And we sent a list to the debtors as to who we're  
9 talking about.

10 THE COURT: So, Mr. Slack, can't we interlineate in  
11 2.6 "subrogation client". Is that a slippery slope here or  
12 not? What's wrong with it?

13 MR. SLACK: Yeah, I think, Your Honor, that we -- that  
14 it's not appropriate to make a blanket -- and especially not in  
15 the protective order, and say that subrogation counsel somehow  
16 get exalted status. The whole point here, Your Honor, is that  
17 these are folks that want to sue the debtors. And there should  
18 be --

19 THE COURT: That's why we have an automatic --

20 MR. SLACK: -- there --

21 THE COURT: -- stay. That's why we have --

22 MR. SLACK: There --

23 THE COURT: -- a claims process. That's why --

24 MR. SLACK: That's exactly right, Your Honor. And so  
25 that there needs to be a process by which if these folks who



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1 are -- have adverse interests, if they want to see the debtors'  
2 information, the debtors should have the ability to know who's  
3 getting what and what they're receiving and make sure that it's  
4 appropriate for --

5 THE COURT: But this is --

6 MR. SLACK: -- somebody who wants to sue the debtor to  
7 see.

8 THE COURT: -- but this is the same thing -- the same  
9 conversation I had with you on the whistleblower. You're in  
10 control of what you release. And this notion that a hundred  
11 different co-counsel have to work with Mr. McCallen to answer  
12 your questions, it distorts it.

13 You should control what you release, and if you say  
14 yes, you can share this with your co-subro counsel, and even if  
15 you've got a list of them, then you've solved the problem.  
16 That, to me, is the solution.

17 MR. TSEKERIDES: Your Honor, can I add some --

18 THE COURT: Sure.

19 MR. TSEKERIDES: -- since I've dealt with Mr. McCallen  
20 on other matters before, on these issues?

21 In this particular case, I think from the debtors'  
22 perspective, you're right, we can control it. But then what  
23 you could be setting up is us giving nothing to anybody,  
24 because we control if we say it's confidential. So I may give  
25 you -- you asked for a request, and it's perfectly legitimate,

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1 and I give it to you, but it's confidential.

2 I look at you and say, okay, it's a legitimate  
3 request. I've given you confidential information. But now if  
4 we give what Mr. McCallen wants, he can give that to all these  
5 subro attorneys who are suing the company. This is not a --

6 THE COURT: But they're not --

7 MR. TSEKERIDES: -- back door --

8 THE COURT: -- suing the company. The --

9 MR. TSEKERIDES: No, but that's what they -- but  
10 that's what they would use it for. Then why do they need it?

11 THE COURT: Then --

12 MR. TSEKERIDES: They shouldn't get -- this is not a  
13 back door for discovery for them in these other cases. That's  
14 our concern.

15 THE COURT: I don't follow you.

16 MR. TSEKERIDES: Okay.

17 THE COURT: The information might be, for example,  
18 suppose the company files a plan, suppose that plan has a  
19 disposition of claims, a channeling or an estimation process,  
20 and the bankruptcy lawyer, like Mr. McCallen, his position has  
21 to share it with the attorney who knows about the insurance and  
22 the subrogation issues. They're supposed to communicate about  
23 it.

24 MR. TSEKERIDES: And --

25 THE COURT: They analyze it. You don't give it to

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1 them in the first place if you don't want to -- you don't think  
2 it's --

3 MR. TSEKERIDES: Well, but we can't -- we can't not  
4 give it to him in the first place.

5 THE COURT: That's right. And if you -- and if you  
6 keep showing up here with frivolous claims of confidentiality,  
7 I will invite you to bring your toothbrush --

8 MR. TSEKERIDES: Right, so --

9 THE COURT: -- and I will overrule your objection.

10 MR. TSEKERIDES: But exactly my point. So to Mr.  
11 McCallen, if he comes with -- for his clients, generally, he  
12 would get the documents. What we're saying is he shouldn't be  
13 able to give it to a subro plaintiff's lawyer who's going to be  
14 suing the debtors.

15 THE COURT: But --

16 MR. TSEKERIDES: And yet -- so then --

17 THE COURT: -- but you --

18 MR. TSEKERIDES: -- use --

19 THE COURT: -- you keep saying "will be suing the  
20 debtor" as though you forgot we have an automatic stay.

21 MR. TSEKERIDES: I'm not forgetting. But, Your  
22 Honor --

23 THE COURT: And if his co-counsel files a suit, you  
24 can drag them in here with a contempt motion.

25 MR. TSEKERIDES: But, Your Honor, but his co-counsel,

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1 one of the people who he wants to have argue on the lift stay  
2 and then go forward on the motion that they filed, that they  
3 joined in, that lawyer, today, is stayed. He should not be  
4 getting or she should not be getting discovery from the debtor  
5 today on some claim that is stayed.

6 To your point to Mr. Slack earlier, the question you  
7 asked him: you have a motion to lift stay, including from Mr.  
8 McCallen's clients, where they want to participate in any kind  
9 of lift stay in state court.

10 THE COURT: Yes.

11 MR. TSEKERIDES: Okay. And there'll be a process, I'm  
12 sure, in state court, for discovery.

13 They should not be able to use discovery here in the  
14 broader Chapter 11 cases ahead of time to prepare for that.

15 THE COURT: Well, I haven't -- I didn't want to turn  
16 this into the lift-stay motion.

17 MR. TSEKERIDES: I know.

18 THE COURT: And if there is a lift-stay motion, I  
19 guess it will have to -- we'll have to figure out what is the  
20 impact of the protective order. But for the moment, there is  
21 very limited relief from stay that's been granted to other  
22 parties, as you know. And maybe there will be more; I don't  
23 know. But for today, we have to figure out a feasible way to  
24 make the protective order work.

25 And again, I keep repeating myself that if you believe

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1 that information shouldn't be out there because of the nature  
2 of the specifics, you resist it and trigger the 7.3 procedure  
3 for meet-and-confer and bring it to the Court. And you  
4 can't -- Mr. Tsekerides, you can't just say we can't have this  
5 broad discovery the way they want it because they're going to  
6 be suing the debtor.

7 MR. TSEKERIDES: But --

8 THE COURT: They are not suing the debtor. And if --

9 MR. TSEKERIDES: But, Your Honor, I would suggest,  
10 respectfully, if we have a procedure that says right now, if  
11 there's a need for a subro attorney to advise, there can't be  
12 all of them they need to advise. They could bring it to us  
13 now.

14 If what you're saying, what they want, right now, is  
15 Mr. McCallen to get information from us, he sends us a request  
16 from his ad hoc committee, perfectly legitimate, I can't say no  
17 to Mr. McCallen on that, but what you're saying is well, if  
18 he's going to give it to a subro attorney now, I should say no  
19 and then come here and have a discussion with you.

20 THE COURT: No, no, you shouldn't.

21 MR. TSEKERIDES: I should --

22 THE COURT: You should say yes, and --

23 MR. TSEKERIDES: Exactly. So but if --

24 THE COURT: But --

25 MR. TSEKERIDES: -- I say yes, how am I going to stop

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1 him from giving it to the subro person?

2 THE COURT: But what is the harm of giving it to the  
3 subro person? What are you -- what am I missing here? If you  
4 can give it your opponent who happens to be more bankruptcy  
5 knowledgeable, why are you at risk -- why is the company being  
6 prejudiced by his sharing it with someone that has a different  
7 specialty?

8 MR. TSEKERIDES: Well, because the person with the  
9 different specialty wants to use it for a lawsuit or a claim  
10 against --

11 THE COURT: But that doesn't --

12 MR. TSEKERIDES: -- the debtor.

13 THE COURT: -- mean he can. It doesn't mean he can  
14 use it for another purpose. It's not an invitation. You're  
15 not waiving the stay. His co-counsel can't run down to state  
16 court and file suit against the debtor, or he'll be dragged in  
17 here for contempt.

18 MR. TSEKERIDES: I appreciate that. But co-counsel  
19 right now could not get that discovery from me. So they're  
20 going to be using this --

21 THE COURT: Well, you know, that --

22 MR. TSEKERIDES: -- process --

23 THE COURT: -- that isn't even clear.

24 MR. TSEKERIDES: Well, it's --

25 THE COURT: Because that co-counsel might make a 2004

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1 exam request.

2 MR. TSEKERIDES: They might.

3 THE COURT: And guess what would happen? It might be  
4 granted.

5 MR. TSEKERIDES: It might be. But at least, Your  
6 Honor, under that circumstance, I'd have an opportunity to  
7 argue against it. Here --

8 THE COURT: But you have an opportunity here to  
9 refuse.

10 MR. TSEKERIDES: Well, but no. You just told me --

11 THE COURT: Okay, look --

12 MR. TSEKERIDES: -- I can't tell Mr. McCallen no.

13 THE COURT: -- okay. I'm going to -- I can't -- like  
14 everything else, I'm not going to turn this into further  
15 briefing, but I have to make a decision, and I'm going to let  
16 there be some interlineation in the definition to expand the  
17 universe of attorneys that Mr. McCallen and his colleagues who  
18 are similarly situated can share with people who have a common  
19 client in a common interest.

20 Obviously I'll leave it to you, from the debtors'  
21 side, to draft it in a way that they're not sharing stuff to  
22 people that don't get some of the information. I don't know  
23 any other way to do it. I mean, I obviously want to make it  
24 work. I understand your point. I simply can't resolve it any  
25 other way. So that's what I'll do.

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1 MR. MCCALLEN: Thank you, Your Honor.

2 THE COURT: So you'll -- Mr. McCallen --

3 MR. MCCALLEN: And for the record -- for the record,  
4 I think when Mr. Tsekerides said he used to work with me in  
5 other cases, he meant it as a compliment, but it didn't sound  
6 like it. So I just want to --

7 MR. TSEKERIDES: It was a compliment.

8 THE COURT: All right, let's go to the issue for  
9 the --

10 MR. MCCALLEN: Your Honor, I'm sorry. Could I just  
11 say one more thing --

12 THE COURT: Yeah.

13 MR. MCCALLEN: -- on a related point? But this isn't  
14 something -- this isn't something we mentioned in our  
15 objection. I just want to, briefly, Your Honor, alert you to  
16 this. Because I think it could be an issue down the road,  
17 although we're not raising it right now.

18 The definition of "professional-eyes-only material",  
19 in the confidentiality order, Your Honor, it requires that  
20 there be a risk of -- that the debtors make a good-faith  
21 assessment that there's a risk of material harm to the debtors  
22 in disclosing the information. But then it also goes on to  
23 define categories of information that can be designated PEO.

24 The categories given are, on their face, pretty broad.  
25 They include insurance-policy information, materials prepared



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1 by industry advisors, financial advisors, accounting advisors.  
2 That's all broad language, Your Honor. Obviously we will -- we  
3 didn't object because we thought this is not something to raise  
4 in the abstract, this is best done in the context of specific  
5 documents, but did want to alert Your Honor to this --

6 THE COURT: Okay.

7 MR. MCCALLEN: -- and to the extent we have --

8 THE COURT: I'll try to keep track --

9 MR. MCCALLEN: -- issues --

10 THE COURT: -- of it.

11 MR. MCCALLEN: -- we'll be back on that. Thank you,  
12 Your Honor.

13 THE COURT: All right, we have on the phone -- are you  
14 the --

15 MR. STERN: Excuse me, Your Honor.

16 THE COURT: Yes, on the phone?

17 MR. STERN: Excuse me. This is -- I'm sorry, it's  
18 David Stern on behalf of NextEra and also speaking on behalf of  
19 the other parties.

20 THE COURT: Yes, sir.

21 MR. STERN: I just wanted to be certain, because we  
22 had so much that went on subsequently, that the modifications  
23 that Mr. Slack articulated at the beginning with respect to  
24 7.3, that applies also to 7.2 -- that was the three-day/five-  
25 day business -- that that is, indeed, doing to be part of the

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1 final order and that that didn't get lost in the shuffle.

2 THE COURT: Oh, I thought that was part of the deal,  
3 right?

4 MR. SLACK: Yeah, so --

5 THE COURT: Yeah.

6 MR. SLACK: -- Your Honor, the way it works -- and I  
7 apologize, because I did intend to make that clear -- is that  
8 7.2(f) talks about any other person specified in paragraph 7.3,  
9 so that the -- anybody who would make an application under  
10 7.3(k), it would also apply to 7.2.

11 THE COURT: Does that satisfy you, Mr. Stern?

12 MR. STERN: Great. I appreciate it. Thank you very  
13 much.

14 THE COURT: Okay. Mr. de Ghetaldi, are you the -- are  
15 you the spokesperson for the fire victims?

16 MR. DE GHETALDI: I am, Your Honor.

17 THE COURT: Okay. I remember your name again.

18 All right, so you heard the open issue that Mr. Slack  
19 touched on.

20 MR. DE GHETALDI: I did.

21 THE COURT: You want to see what the TCC gets; is that  
22 it?

23 MR. DE GHETALDI: Essentially, yes, Your Honor. Just  
24 a little history, I think, would be helpful. As I've said  
25 before, our firm started litigating against PG&E in 2010 with

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1 the San Bruno --

2 THE COURT: Right.

3 MR. DE GHETALDI: -- fires, and has continued on  
4 through the Fresno, Sheriff's Gun Range fire and explosion, the  
5 Butte fire, the North Bay fires, and the Camp fire. And  
6 throughout that long history, we've worked hand-in-hand with  
7 the subrogation attorneys.

8 We have common-interest agreements with them on that.  
9 There are four firms currently who represent members of the TCC  
10 who were, along with our firm, in leadership positions in all  
11 of those complex litigations.

12 We've received literally hundreds of thousands, if not  
13 into the millions, of documents from PG&E, some of which were  
14 marked confidential, some of which were not. And there's never  
15 been an issue of our having misused any of those documents  
16 during that nine-year period.

17 Now, we currently represent -- our firm, the Danko  
18 firm, and the Gibbs firm, currently represents approximately  
19 3,000 victims of the Butte fire, the North Bay fires, Camp  
20 fire, the Sheriff's Gun Range explosion, and fire in Fresno.  
21 We also represent a number of whistleblowers, Your Honor.

22 And this protective order, I have to say, is -- maybe  
23 it's a bankruptcy thing. I don't know. I'm a nonbankruptcy  
24 litigator. And the way that production works in the cases that  
25 I'm familiar with is that somebody makes a request and all of

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1 the parties get the documents. And if there's a problem, then  
2 the producing party makes a motion to the court and has the  
3 burden of showing why a certain document should not be produced  
4 all or should not be produced to a certain party.

5 And here, in this protective order, that process is  
6 turned completely upside down. It would be on the other  
7 attorneys, who have not requested a document, to make the case  
8 for why they should. It puts the burden, to me, on the wrong  
9 party, especially if where we've said that we would agree to  
10 sign this agreement to be bound, that is, we would not misuse  
11 any document that we receive.

12 And so the Court was asking counsel for the  
13 subrogation lawyers about the provision that defines outside  
14 counsel and how to meld that in to the protective order. And  
15 my suggestion would be to modify 7.3 to add a subdivision that  
16 specifically says that outside counsel can receive documents if  
17 they agree to be bound by the agreement that's attached to the  
18 protective order.

19 I think it's a simple fix. And right now, the way  
20 that it's worded, even though outside counsel is defined, the  
21 outside counsel who can receive documents under 7.3 is  
22 extremely limited.

23 So I would -- that would be my suggestion on that,  
24 Your Honor.

25 Also, we -- our firms do have two clients among the

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1 eight who are seeking relief from the stay on the preference  
2 motion. And it seems to me that we have a need to see  
3 documents that we reasonably believe the TCC has asked for or  
4 will be asking for, because our interests are substantially the  
5 same as the representatives on the TCC. They --

6 THE COURT: Well, therefore what? I'm not sure I  
7 understand your point. Therefore what?

8 MR. DE GHETALDI: Therefore, why is it that we cannot  
9 see the documents?

10 THE COURT: Oh, no, you --

11 MR. DE GHETALDI: Again, it goes to the burden.

12 THE COURT: No, you made that point a minute ago.

13 MR. DE GHETALDI: Okay.

14 THE COURT: But then you went to the eight -- the two  
15 of the eight people who are on the motion for relief from stay.

16 MR. DE GHETALDI: Oh, right.

17 THE COURT: This is not the motion for relief stay.

18 MR. DE GHETALDI: Right.

19 THE COURT: So why are you bringing that motion for  
20 relief from stay up now? What do you want me to do with that?

21 MR. DE GHETALDI: Well, because of the -- on the off  
22 chance that the Court grants the motion --

23 THE COURT: Well, okay. I won't grant it or deny it  
24 until I hear it.

25 MR. DE GHETALDI: I understand. I understand. But --

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1 THE COURT: They haven't even made an opposition yet.

2 MR. DE GHETALDI: I'm sorry. I had not finished that  
3 thought. Under section 8, which is on pages 13 and 14, I  
4 think --

5 THE COURT: Section 8 of the protective order?

6 MR. DE GHETALDI: Yeah.

7 THE COURT: Okay.

8 MR. DE GHETALDI: It actually -- it's interesting,  
9 because this section actually places the burden of protecting  
10 documents on the debtors or on the producing parties if the  
11 case is remanded to state court for that trial.

12 And so it seems to me that that disparity actually  
13 shows that there is no need for the tight strictures on  
14 production to anyone other than the requesting party.

15 THE COURT: I'm still -- I'm not following you.  
16 Because if I were to grant the motion for relief from stay when  
17 it comes up, maybe we have to revisit some aspects of the  
18 protective order. But if I deny the motion for relief from  
19 stay, we're dealing with the protective order.

20 MR. DE GHETALDI: Understood, Your Honor.

21 THE COURT: So I can't -- I'm having enough trouble  
22 deciding today what's abstract, and so I've got to wait and see  
23 what responses there are to the motion for relief from stay.  
24 The fact that -- Mr. de Ghetaldi, that you have two of the  
25 eight victims is a fact, and in a sense, perhaps you're going

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1 to join that motion. I don't know.

2 MR. DE GHETALDI: I already did, Your Honor.

3 THE COURT: The motion has been made by people who  
4 don't -- who normally don't make a motion. Committees don't  
5 usually make motions for relief from stay.

6 MR. DE GHETALDI: I --

7 THE COURT: People who are stayed make motions for  
8 relief from stay.

9 MR. DE GHETALDI: I agree --

10 THE COURT: But I'm not worrying about that today.  
11 Let's talk about today. So --

12 MR. DE GHETALDI: Your Honor, I agree with the Court's  
13 comment --

14 THE COURT: Okay.

15 MR. DE GHETALDI: -- about a potential standing issue,  
16 but we did join that motion.

17 THE COURT: Okay. Okay, but again, I --

18 MR. DE GHETALDI: And so we're on the record as --

19 THE COURT: -- only read these things when I have to.

20 MR. DE GHETALDI: Understood.

21 THE COURT: I was reading the D&O motion last night,  
22 not the relief from stay that's two weeks down the road.

23 MR. DE GHETALDI: I understand that.

24 THE COURT: Okay.

25 MR. DE GHETALDI: But my point here was simply, Your

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1 Honor, that this protective order is inconsistent in terms of  
2 the party on which the burden is placed. The protective order,  
3 as it is written, places the burden on the requesting party or  
4 people who would like to see documents that the requesting  
5 party has asked for, whereas this section 8 places the burden  
6 on the debtors, on the defendant, on PG&E.

7 And so my point was simply that the way that the  
8 protective order, as written, treats the burden of justifying  
9 production, nonproduction, receipt, or nonreceipt, is  
10 inconsistent. And I think that the better practice is to  
11 require the debtor to show cause why documents should not be  
12 produced to certain parties rather than putting that burden on  
13 the parties themselves.

14 So it's also my understanding, Your Honor, in  
15 conversations with counsel for the TCC, that the TCC supports  
16 our request to be allowed to see documents that they have  
17 requested from the debtor. And so I know that counsel for the  
18 TCC is on the phone and he has told me that. And other counsel  
19 for the TCC have told me that. And so I --

20 THE COURT: Okay. Let me see what Mr. Slack wants to  
21 respond. We've got two questions, I guess. One is to modify  
22 7.3 -- well, maybe that -- I mean, that's essentially it. So  
23 do you -- I take it you oppose that?

24 MR. SLACK: Yeah, Your Honor, we think that turns the  
25 entire document production process on its head, because what



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1 you need and what is important in this is a process by which  
2 anybody who wants documents makes a request to the debtor, so  
3 that the debtor has the ability to say yes or no, because  
4 that's the point I think Your Honor was making before.

5 If we agree to produce documents to a particular  
6 person, and then we're making that decision. And so all --

7 THE COURT: Right.

8 MR. SLACK: -- all we're saying, Your Honor, is if  
9 those folks who are the individual fire victims, if they want  
10 documents from the debtor, they should make a request and the  
11 debtor, on a case-by-case basis, should look at the documents  
12 they want.

13 And I think the other point, Your Honor -- and I  
14 really don't think there's much dispute about it -- is that  
15 there's a number of documents -- because the TCC is an official  
16 committee and they have a broad role -- so they're getting  
17 documents with respect to the -- again, the compensation  
18 motions, and --

19 THE COURT: Yeah, lots of things. Lots of things.

20 MR. SLACK: -- so it can't be that every document that  
21 we produce to the TCC automatically gets produced to a zillion  
22 parties across the spectrum. That makes no sense.

23 So there should be specific requests of the debtor,  
24 and we would say, Your Honor, there should be no change, and  
25 there needs to be no change to the protective order, which is

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1 very, very common, and the terms here are very typical.

2 THE COURT: So Mr. de Ghetaldi would simply modify 7.3  
3 to include -- well, I think the way he said it would be in --  
4 he would include -- well, I guess it's the definition of -- one  
5 of the definitional sections. I'm a little confused, because I  
6 just haven't memorized the sections. So I'm not sure which  
7 one. It's the --

8 MR. DE GHETALDI: 2.6, I believe.

9 THE COURT: It's at 2.6. It's the same as the outside  
10 counsel, we just did with subro folks, right? And it would  
11 extend to him as well, not subrogation. Isn't that what --

12 MR. SLACK: But, Your Honor, there's a difference  
13 here, and I think it's an important difference. And that  
14 difference is, Your Honor, that what happens in each of the  
15 other situations is -- what the subrogation counsel were saying  
16 is if they make a request, the subrogation counsel makes a  
17 request --

18 THE COURT: Yeah.

19 MR. SLACK: -- they want to give it to their --

20 THE COURT: Yeah, no. And I -- and that's --

21 MR. SLACK: -- outside counsel. The difference is,  
22 and what we're saying is, let's put the -- let's put everybody  
23 in that same boat, then. Let's have the individual fire  
24 counsel make a request and then have the debtor be able to  
25 respond to that.

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1 THE COURT: Yeah, I --

2 MR. SLACK: And so --

3 THE COURT: No, I understand your point. I understand  
4 your point.

5 Look, my problem is I'm trying to keep up with these  
6 definitions of something that I've just been handed, again, and  
7 I can't keep up with you. But I understand your point. You do  
8 not want Mr. de Ghetaldi to be treated separately the way he  
9 requests. And I think that's -- I'm going to stick with that.

10 Mr. de Ghetaldi, I think I have to go with Mr. Slack's  
11 view on that, and put you in the position of making the  
12 request. And again, I have a history, I think, of being pretty  
13 open about making people cooperate on discovery requests. So  
14 request it, and if they don't have a good reason to turn you  
15 down, they better comply or we'll deal with it here.

16 And I do think that the situation with the subrogation  
17 claims are different. And the point about what happens if  
18 relief from stay is granted is something we'll just have to  
19 deal with that later. And if so, there's -- excuse me -- if  
20 there's an inconsistency in the document there's nothing I can  
21 do about it. I'm not going to try to fix it. It's been  
22 hammered out with too many players. So I'm not going to turn  
23 your group into sort of a co-TCC.

24 But make the request. You won't get -- you shouldn't  
25 get opposition from stuff that would be reasonably requested

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1 for you, for your clients' position. That's all I can tell  
2 you.

3 MR. DE GHETALDI: Okay, Your Honor. I would --

4 THE COURT: Okay?

5 MR. DE GHETALDI: -- I would just suggest that if  
6 there are certain categories of documents that the debtor is  
7 leery of producing to our firms, then I'm happy to talk about  
8 that. But it seems to me that the vast universe of documents  
9 that exist in the debtors' possession, should not be a problem.  
10 So that, I would propose as an alternative.

11 We did have a conversation last week, but we never got  
12 to that issue.

13 THE COURT: I invite the continued conversations. The  
14 problem that I'm having is it's difficult to make these  
15 decisions on the fly with different interests in such a moving  
16 target. So I gave -- over Mr. Slack's objection, I gave one  
17 concession to the subrogation group. And I've stayed open on  
18 this question of the government -- the thing that Mr. Pascuzzi  
19 argued about. But generally, I'm sticking with the debtors'  
20 view on this.

21 And the message to them is make sure you cooperate so  
22 we don't waste time with unnecessary motions to compel or  
23 informal motions to compel under the procedures here.

24 I can't -- we'll leave it at that.

25 MR. DE GHETALDI: Thank you, Your Honor.

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1 THE COURT: Okay, thank you for your time.

2 Do we have anything else to take care of today?

3 Mr. Slack, how much time do you want to anticipate  
4 before you'll give me whatever authority you have to deal with  
5 Mr. Pascuzzi, unless you guys can reach an agreement on your  
6 own?

7 Do you want to -- I mean, it seems to me if I -- you  
8 need to give me a time that you want to try to do it.

9 MR. SLACK: So we're happy to put in something in a  
10 week, Your Honor. Does that work for you?

11 THE COURT: Yes, sure. Sure.

12 Mr. Pascuzzi?

13 MR. PASCUZZI: Yes.

14 THE COURT: A week to respond after that?

15 MR. PASCUZZI: Yes, Your Honor.

16 THE COURT: Okay. Just and I don't want reply. Just  
17 short and sweet. Don't give me the -- reinvent the wheel.  
18 Just give me this narrow issue on why this whistleblower thing  
19 is inappropriate from the debtors' point of view, and what are  
20 we talking about. Okay?

21 MR. PASCUZZI: Yes, Your Honor.

22 MR. SLACK: Your Honor, I'm not sure when that would  
23 put -- do you want a continued hearing, or just submit the  
24 briefs and then you'll decide? Which his fine.

25 THE COURT: I'll decide.

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1 MR. SLACK: Okay. Then yeah. Then give us a week  
2 after, if that's okay?

3 THE COURT: That's fine.

4 MR. SLACK: All right.

5 THE COURT: Okay, so today is the 8th. So --

6 UNIDENTIFIED SPEAKER: The 9th.

7 THE COURT: 9th? Today is the 9th. Right, 9th.  
8 Seven -- 16th, and 23rd.

9 MR. SLACK: So, Your Honor, would it be -- because  
10 this is an objection, it seems to me here that both parties can  
11 be putting these in at the same time with their position. If  
12 not, it would seem to me appropriate that the debtors -- even  
13 if it's just a couple of days, get a reply.

14 THE COURT: Yeah, but I can only do so much. I've got  
15 these other motions coming up on the very next day.

16 MR. SLACK: Right.

17 THE COURT: I've got -- my other question, though, is,  
18 should we -- and maybe we covered this -- can we go with the  
19 order as is, or do you need -- we need to hold up this last  
20 provision until I get this thing briefed from you? What do you  
21 think, Mr. Slack?

22 MR. SLACK: I mean, it seems to me that we could put  
23 in place an order. We do have to -- we do have to craft the  
24 language around the subrogation --

25 THE COURT: Right, right.

PG&E Corp., Pacific Gas and Electric Co.

1 MR. SLACK: -- issue, Your Honor. We'll work with  
2 them on that. But then I think Your Honor could put in place  
3 an order.

4 THE COURT: Okay. Let's do that. So --

5 MR. SLACK: And then we can decide if this other issue  
6 is going to go in, Your Honor would be able to make that at  
7 some future time.

8 THE COURT: Yeah. Mr. Pascuzzi, I'd rather close this  
9 matter. I'll get the brief from -- brief brief from Mr. Slack  
10 in a week, and a response from you. Chances are, since it's  
11 the very next day when we have some fairly heavy-duty motions  
12 to deal with, I'll do my best to respond. But I'm not -- I'll  
13 just -- I'll consider it submitted on that narrow issue. In  
14 the meantime, we'll get the order.

15 MR. PASCUZZI: And then if -- and then the Court can  
16 issue an amended order if necessary. Okay.

17 THE COURT: Something -- okay.

18 MR. PASCUZZI: Thank you, Your Honor.

19 THE COURT: Thank you all for your time. It was a  
20 long morning.

21 IN UNISON: Thank you, Your Honor.

22 (Whereupon these proceedings were concluded at 11:45 AM)

23

24

25

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I, Clara Rubin, certify that the foregoing transcript is a true and accurate record of the proceedings.



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/s/ CLARA RUBIN

eScribers

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Date: July 10, 2019

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